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UNDER HER EARLY KINGS.

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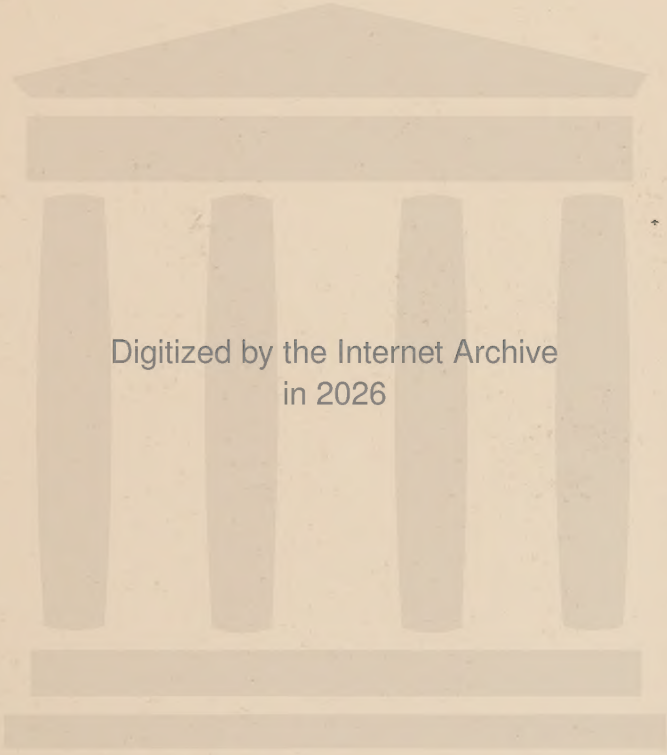

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SCOTLAND

UNDER HER EARLY KINGS

A HISTORY OF THE KINGDOM

TO THE CLOSE OF THE THIRTEENTH CENTURY

BY

E. WILLIAM ROBERTSON

VOL. II.

EDINBURGH

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1862

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CONTENTS OF VOLUME II.

Map of Scotland under David . . . . . *Frontispiece*

CHAPTER XIV.

PAGE

ALEXANDER THE SECOND, 1214–1249 1

CHAPTER XV.

ALEXANDER THE THIRD, 1249–1263 53

CHAPTER XVI.

ALEXANDER THE THIRD, 1263–1285 97

CHAPTER XVII.

THE CONCLUSION, 1249–1285 127

APPENDIX.

A. KINGS OF THE PICTS—KINGS OF DALRIADA—KINGS OF SCOTLAND—JARLS OF THE ORKNEYS—THE HY IVAR—KINGS OF MAN—LORDS OF THE OIRIR-GAEL 185

B. THE CELT AND THE TEUTON 197

C. LÆTS 232

D. TENURES 251

PAGE

E. WERGILDS—Frank Wergilds—Frisons—Alamanni—Bavarians—Angles and Werns—Lombards—Saxons Burgundians—Kent. Ethelbert, 597-616—Wessex under Ini, 688-725—Wessex under Alfred—North People's Law—Mercian Law—Canute—William the Conqueror—Leges Hen. I.—Icelandic Baugatal—Gutalag—Gulathing—Swedish Upland Law—Danish Jutland law—Welch Gwerth—Leges inter Scottos et Brettos—Mercheta Mulierum . . 275

F. THE KIN—Roman Cognatio—Quarterings—The Scottish Thane 309

G. COINAGE—Roman Weight—Old Scandinavian Weight—Cologne Mark—Tower Weight—Paris Troy Weight—Old Bavarian Pound—Old Scottish Pound—Money Values in Merovingian Denarii, and in Carlovingian or Sterling Denarii 341

H. EARLY IRELAND 353

I. PICTS AND SCOTS 366

K. PICTS OF GALLOWAY 382

L. THE ENGLISH CLAIMS—Part I. 384

„ „ Part II. 401

M. THE DANELAGE 430

N. THANES 444

O. BIATAGHS 472

P. KALI HUNDISON 477

Q. ORDERICUS VITALIS 480

R. THE THEORY OF DISPLACEMENT 484

S. THE SEVEN EARLS 502

T. THE LAWS OF KING HENRY THE FIRST . . . 506

History of Scotland

to the close of the 13th century.

CHAPTER XIV.

Alexander the Second—1214–1249.

A coronation in the thirteenth century was more than a mere gorgeous ceremony, for it was in a certain sense one of the titles by which a king held his crown. Men's minds were still much influenced by the external forms which were slowly giving way to deeds and written documents, and they were apt to look upon the prince, whose coronation they had witnessed, or who had been proclaimed their king in any other manner to which they were accustomed, as the rightful sovereign, without further question of his title. Accordingly, within twenty-four hours of the death of the late king, his successor was crowned at Scone, and hailed as their lawful sovereign by both Estates of the Realm; who, after uniting for three days in celebrating the accession of the youthful Alexander, resumed the character of mourners, and returning to Stirling, where the widowed Ermengarde still watched by the body of her husband, escorted the remains of the deceased monarch to their last resting-place at Arbroath.*

* *Fordun*, l. 9, c. 1, 27. There is no allusion to a coronation before this reign, and from some expressions of Giraldus Cambrensis it would almost

It was at a momentous period of English history that Alexander ascended the throne, for it was the era in which the barons of England wrung from the fears of their dastard sovereign the great charter of
A. D. 1215. their liberties. It was in vain that they had deputed Eustace de Vesci to remind the head of the Roman Church that the reconciliation of John with the papal see had been mainly brought about through the exertions of his barons; and to urge that, in return for their friendly offices, their king should be bound to keep the oath, that he would respect the liberties of his people, which he had sworn in the council of London.* In the opinion of Innocent the Church alone was entitled to liberties, and warmly espousing the cause of the tyrant, he warned the barons against incurring the danger of excommunication by persisting in a rebellious assertion of their rights; and when John petitioned to be absolved from the oath which he had again repeated in the famous meeting at Runnymede, and to be released from the engagements which he had there sworn faithfully and fully to observe, Innocent listened with favour to the request of his "vassal," unhesitatingly annulled the Great Charter, and launched the threatened excommunication against the assertors of the liberties of Englishmen. Driven by this conduct to extremities, the confederates turned elsewhere for support, and

appear as if this was the first *feudal* coronation in Scotland, though his words may only apply to Spain. "Scotorum principes qui et Reges dicuntur, sicut et Hispaniæ principes, qui nec coronari tamen consueverant, nec inungi." (*Instr. Princ. Dist.* 1. *Bouquet*, v. 18.)

* *Fœd.*, vol. 1, pt. 1, p. 120. Eustace de Vesci reached Rome on the 28th of February 1215. John's envoy, Mauclerk, had been before-hand, having arrived on the 17th. I have been particular in noticing the dates, as some authorities place John's demand that the barons should bind themselves never to claim their rights from him or his successors, *after* Runnymede, though it is alluded to in Mauclerk's letter.

sought to strengthen themselves by foreign alliances; whilst the barons of the north, who were conspicuous in the ranks of the disaffected, easily obtained the assistance of the young king of Scotland by a promise of the northern counties.*

Alexander had already escaped a danger from another quarter, which might otherwise have interfered with the meditated alliance. The accession of a youthful prince to the throne of Scotland had naturally been the signal for a renewal of the disturbances in the north and west, a brother of the last Mac William who, like his father, bore the name of Donald Bane, suddenly appearing in Moray with Kenneth Mac Heth, the last of that ancient name who ever figures in history. Their career, however, was brief, for every defeat of the partizans of Mac William must have served to strengthen the royal authority in the north of Scotland; nor had the successful campaigns of William against the Earl of Orkney been without effect in the same quarter, and the chieftains of the north-western Highlands began at length to grow indifferent to a cause of which they were once amongst the firmest supporters. Accordingly, when the younger Donald Bane invaded Moray, he was at once opposed by one of the greatest amongst the northern barons, Ferquhard Mac-in-Sagart, Earl of Ross, the first known member of a family whose subsequent importance, like that of the great northern branch of the *de Moravias*, seems to have grown out of the decline of the Earls of Orkney,

* "Non pertinet ad Papam ordinatio rerum laicarum," was the answer of the barons As Alexander sent a peaceful embassy to John as late as the 7th of July, he could not have finally joined the confederates before that time, though a clause in Magna Charta, securing his rights as an English baron, seems to show that he may have incurred the danger of forfeiture by his previous policy. *Fœd.*, vol. 1, pt. 1, pp. 127, 135, 136, 138, 139.

and of the Gall-Gael. The insurgents were soon de-
15th June. feated with the loss of both their leaders; and the earl, on presenting the heads of his prisoners as a testimony of his loyalty to the young king, was rewarded for his prompt repression of the rebellion by receiving from the royal hand the honour of knighthood.*

Towards the middle of October, Alexander crossed the Borders; and while his army was occupied with an ineffectual investment of Norham, he received the homage of the barons of Northumberland at Felton, where Eustace de Vesci, by the presentation of a white wand, formally made over the three northern counties to his royal kinsman. Scottish armies, at this period, appear to have been usually unsuccessful in their sieges, and, accordingly, Norham still held out at the close of November, when the assailants were obliged to retire from before its walls, as John was now fast approaching Scotland, burning to vent

* *Chron. Mel.* 1215. It may appear singular at first sight that "the Thanes of Ross," who invited Godfrey Mac William to put forward his pretensions in 1211, should have opposed his brother Donald only four years later, but a remark in one of the Sagas may explain the seeming anomaly—"Heinrek, his son (*i.e.*, of Harald Mac Madach), possesses Ross." There were then *two* claimants of the earldom, of the rival races of the west, the native Scottish, and the Scoto-Norwegian. Ferquhard and the subsequent earls of his family, who held Skye and the *Nordreys* by grant from the Scottish kings, were the great supporters of the royal interest in these quarters, and the inveterate opponents of the Gall-Gael, Islanders, and all who claimed to hold these islands as Norwegian fiefs, and consequently leant towards the kings of Norway. As the earldom was part of the dowry of Ada, one of prince Henry's daughters, when she married the Count of Holland in 1160-62 (*Doc. Illust. Hist. Scot.*, p. 20, sec. 5), it was probably forfeited for the rebellion in 1160, and regranted to Ferquhard about the same time as the *de Moravias* acquired a footing in Sutherland. *Mac-in-sagart* —the priest's son—seems to point to Ferquhard as one of those characters so often met with in Scottish and Irish history, combining ecclesiastical and temporal authority. He was probably the *Cowarb* of the church lands in Ross, representing the head of the old family of the district. Eastern Ross was probably the portion in which the Scoto-Norse element preponderated, holding their *Things* long enough in this quarter to impress the name of *Dingwall* upon one of the capitals of the modern county. Dingwall was still included in Caithness at the opening of the fourteenth century.

his wrath upon Alexander for adhering to the cause of the revolted nobles. The Yorkshire barons, retiring at his approach, fired their villages, laid waste their lands, and tendered their allegiance to Alexander on the very day on which John burnt the town of Werk. Morpeth, Mitford, and Alnwick, had already been destroyed; Berwick and Roxburgh were carried by storm, Haddington and Dunbar soon sharing the same fate. In the train of the English sovereign came the mercenary Riders of Flanders and Brabant, whose atrocities were worthy of such a leader. "Thus will we bolt this little red fox from his earth," exclaimed the king, as he encouraged his foreign bands in the perpetration of such enormities, that he was currently reported to have brought Jews in his train, to assist his cruelty in devising novel and unheard of torments. Alexander at first awaited the attack of the enemy in a position he had taken up upon the Esk, moving subsequently in the direction of the Pentland Hills, with the intention of intercepting the retreat of the English army. His own ravages, however, and the policy of the Yorkshire barons, prevented John from penetrating further than Haddington, for he was soon obliged to retire from a district in which his troops would have perished before long for want of subsistence; though his retreat was not commenced until his followers had outraged the feelings of the age by plundering the abbey of Coldingham, whilst John gave the signal for the conflagration of Berwick, by firing, with his own hand, the house in which he slept on his return.*

A. D. 1216.

12th Jan.

The month of February found the Scottish army

* *Chron. Mel.* 1216. *Mat. Par.* 1216, p. 191. *Fordun*, l. 9, c. 28. The staff used by de Vesci in the ceremony of investing Alexander with the northern counties was subsequently carried off by Edward I.

engaged in retaliating upon Cumberland the ravages inflicted upon the fertile plains of the Lothians; a body of lawless irregulars, imitating the conduct of the foreign mercenaries at Coldingham, by perpetrating a similar outrage at Holmcultram. After the arrival of Louis of France, Alexander, who had returned to Scotland, again crossed the frontier, possessed himself of Carlisle, a town always inclined towards the Scottish connection, and uniting his forces with the retainers of the northern barons, traversed the whole length of England to Dover, to tender his homage to the French prince as suzerain of his fiefs in England. During the march towards Dover the lands of the confederates were carefully protected from harm, the vengeance of the allies being reserved especially for the partizans of John, whose territories were harried without mercy; though not always with impunity, as one of the foremost leaders was slain on the route, Eustace de Vesci, who was shot through the head, by a *quarrel*, whilst reconnoitring Bernard Castle. As the confederates passed Lincoln, they carried the town by storm, putting the garrison of the castle to ransom; and on reaching London, a close alliance was concluded between the French and Scottish princes and the barons, all pledging themselves, at a conference held in the capital, never to conclude a peace with their mutual foe which should not embrace all and each of the contracting parties.*

Compelled to remain a wrathful and unwilling spectator of the triumphant progress of the allies throughout the entire length of his dominions, John determined to revenge himself by cutting off the

* *Chron. Mel.* and *Walter of Coventry* 1216. The chronicler adds that Louis and the barons failed to keep their engagement with Alexander.

Scots on their homeward march, giving orders for all the bridges by which they could cross the Trent to be broken down, and moving his own army in the direction of Norfolk. His intentions were frustrated by the sudden advance of the confederates, who were then besieging Windsor Castle; and in the confusion ensuing upon John's death, which occurred shortly afterwards, the followers of Alexander and the northern barons are said to have plundered the camp of the very army, with which the deceased king had intended to intercept their return.* 19th Oct.

After a protracted investment of the castle of Carlisle, the garrison surrendered on promise of their lives; and the fort at Tweedmouth, of which John seems to have ordered the reconstruction after the capture of Berwick, was destroyed by the Scots about the same time. In the following May, Alexander, again entering England, commenced the investment of Mitford Castle; but upon learning the result of the disastrous battle of Lincoln, raising the siege, he retired into Scotland, without engaging in further hostilities, until a threat of retaliation, held out by the wardens of the English marches, again collected a Scottish army for the defence of the southern frontier. Alexander, who meditated another invasion, had not advanced beyond Jedburgh when he received intelligence of the peace between Henry and Louis, a clause in their treaty extending its provisions to the Scottish king, on condition of returning all conquests made during the late war; and as his acquisitions were limited to the town and castle of Carlisle, and the advisers of Henry entertained no desire of prosecuting a harassing and useless contest, a reconciliation between the young kings A. D. 1217.

* *Fordun*, l. 9, c. 29.

was effected without difficulty, and a peace was speedily arranged. Accordingly, in the beginning of December, Alexander was released at Berwick from the excommunication which he had incurred through supporting the cause of English liberty and the barons; and before the close of the same month, he received investiture at Northampton of the Honor of Huntingdon and his other English fiefs and dignities, performing homage in the usual manner.* His kingdom, however, still continued under the interdict; and though their king appears to have encountered little difficulty in appeasing the anger of the Church, the Scottish people were not finally absolved from the consequences of their sovereign's policy, until they had largely contributed to the emolument of the legate Gualo.†

* *Chron. Mel.* 1217. *Fordun*, l. 9, c. 30, 31. *Fœd.*, vol. 1, pt. 1, p. 148. Alexander was put in possession of all the lands held of him by Earl David in nine English counties (postquam) "fecit quod facere debuit," at Northampton. *Rot. Claus.* p. 348. "The Scottish historians," writes Dr. Lingard (*Hist. Eng.*, c. 15, note 24), "say the homage was for lands in England. *Mel.* 595. *Ford.*, 9, 31. Yet there is reason to believe that Alexander did not at that time hold any lands in England. See *Rymer.*, 2, 266." The Fœdera may be searched in vain for any notice of this transaction, whilst the idea that the vassal received his fiefs *before* the performance of homage is not quite in keeping with a thorough appreciation of feudal technicalities. Elsewhere the historian quotes the passage from the Close Rolls alluding to this homage, "Alexander Rex Scottorum venit ad fidem et servitium nostrum, et nobis fecit quod facere debuit." Here he stops, but had he concluded the letter—"Et ideo tibi (Vic. Linc.) præcepimus quod ei sine dilatione plenam saisinam habere facias de omnibus terris et tenementis quæ Comes David *de eo tenuit* in Balliva tua de Honore Huntingdunense. Eodem modo scribitur Vic. Leic., Cantab. et Hunt., Norhamp., Rotland., Bed. et Buckin, Essex et Middlesex"—it would have confirmed the correctness of the Scottish authorities.

† In describing the progress of the legate's envoys the Melrose chronicler uses the expressions "progressi sunt in *profundam* Scotiam usque Aberden"—*the depths* of Scotland as far as Aberdeen. The envoys appear to have fared well, for the Prior of Lindores was almost suffocated in his bed by a fire occasioned "per incuriam et *prodigalitatem pincernarum.*" Scotsmen as well as Englishmen may look with interest upon the Church of Sant' Andrea at Vercelli, raised with the money levied from their forefathers by Cardinal Gualo—he seems to have been a collector of Anglo-Saxon MSS. as well as of English money—whose method of proceeding is thus graphi-

About two years after the restoration of peace A. D. 1219.
Alexander lost his aged uncle, David, Earl of Huntingdon. Besides the Honor from which he derived his title, and which conferred upon him lands in nine English counties, for all of which the king of Scotland was tenant-in-chief, David held the earldom of Garioch, and, at one time, that of Lennox also, together with the lordship of Strathbogie, and many other possessions in his native country.* He is said to have followed the English Richard, and to have shared in the perils of the second crusade, founding, on his return from Palestine, the Abbey of Lindores in gratitude for his hairbreadth escapes; though there are several difficulties in the way of the latter part of the story. Several children were the issue of his marriage with the sister of Randolph, Earl of Chester, two of whom, his sons David and Henry, predeceased him; whilst his third son, John, surnamed "the Scot," who was under age at the time of David's death, lived to inherit the earldoms of Chester and Lincoln, in right of his maternal descent, in addition to the numerous possessions of his father. Of his four daughters, Margaret, the eldest, married Alan of Galloway; their youngest child, Dervorguil, carrying to the family of Balliol her pretensions upon the crown of Scotland: Isabella became the wife of

cally described by a rhyming churchman smarting under his exactions:—

"Ultra modum Gualonem Scoti formidamus;
Totum quod expostulat, illi ministramus;
Et quod volet petere, nisi tribuamus,
Dicit, vos suspendimus, excommunicamus."

* *Fordun*, l. 9, c. 27, 33. *Rot. Claus.* p. 348. As two *Aluins*, father and son, held the earldom of Lennox for many years during the lifetime of David, he probably enjoyed the wardship during a minority, just as Alan Durward subsequently held the earldom of Atholl during the minority of Patrick de Galloway. The kings of Scotland seem to have enjoyed great privileges in this manner, "Cum ab uno rege feuda omnia recognoscerent Scoti, vasallo mortuo prædiorum fructus omnes usque dum filius unum et vicessimum annum implessit, regibus *Relievi* causa tribuebant, *Werdas* autem vocant." *Hotoman*, quoted in *Wright's Tenures*, p. 89.

Robert Bruce, and the ancestress of an illustrious line of kings; whilst Ada, the youngest, was united to Henry de Hastings, and the remaining sister Matilda died unmarried.*

Some difference appears to have arisen, about this time, in carrying out the terms of the agreement formerly contracted between John and William; for the six years named as the limit of the king of Scotland's last concession had now expired, whilst none
A. D. 1218. of the stipulations had as yet been fulfilled. Alexander referred the case along with other matters to the court of Rome, forwarding copies of John's letters to the pope, soliciting his decision to pronounce whether the arrangements to which those documents alluded were still to be carried out; and Honorius, listening to the request of the king of Scotland, transmitted a full confirmation of all the liberties of
A. D. 1219. the Scottish Church, and appointed Gualo's successor, Pandulph, to act as arbitrator in the other questions between the kings. Accordingly a conference was
2d Aug. held at Norham between Alexander, Pandulph, and Stephen de Segrave, the commissioner in behalf of the English king, and it was in consequence, apparently, of the decision arrived at upon this occasion
A. D. 1220. that, in the course of the following year, both kings
15th June. met the legate at York, when it was arranged that Alexander should marry the Princess Joanna of England, or her sister Isabella, and that Henry should provide suitable alliances for the two Scottish

* *Vide Balliol's claim. Fœd.*, vol. 1, pt. 2, p. 776. Guy, first abbot of Lindores, died on the 17th July 1219, "cum ipsum locum à fundamentis construxisset . . . . . et fere per viginti octo annos monasterium strenue rexisset," *Fordun*, l. 9, c. 27. Acre fell on the 12th of July 1191. David married Matilda of Chester on the 26th of August 1190. *Chron. Mel. ad an.* This leaves a very narrow margin for his adventures, and indeed Boece is the first authority who sends the prince to the Holy Land.

princesses within the year. The only difficulty was the absence of the Princess Joanna, who had been betrothed in her childhood to Hugh de Lusignan, Count de la Marche; but upon the death of John, Count Hugh, preferring the mother to the daughter, married the widowed queen of England, whilst he still retained the younger princess, in the hope, apparently, of deriving some advantage from her detention. It was not without some trouble that A. D. 1221. Henry regained possession of his sister, when, in the following year, the two courts were again assembled at York, and in pursuance of the arrangement agreed upon at the preceding meeting, the Scottish king 19th June. was united to the Princess Joanna, whilst his eldest sister, Margaret, was at the same time given in marriage to Hubert de Burgh; though four years were still suffered to elapse before the hand of Isabella of Scotland was bestowed upon Roger Bigod.*

* *Chron. Mel.* 1221. *Fordun*, l. 9, c. 34. *Fœd.*, vol. 1, pt. 1, pp. 152, 154, 157, 160, 161, 178. The six years from the 7th of February 1212 must have expired on the 7th of February 1218. The letter of Honorius to Alexander, dated the 10th of November 1218, is placed in the *Fœdera* by mistake under 1219. I cannot see why Dr. Lingard should have supposed that Alexander applied to the Pope on account of "the burdensome and disgraceful nature of the treaties which William had been compelled to make with John." (*Hist. Eng.*, c. 15, note 13.) Eighteen years later Alexander grounded the claims for which he received compensation upon the terms of *these very treaties* (for there seem to have been more than one), and his demands on this occasion are said by a contemporary English historian to have been founded on justice—"quod pluris est, causa justa Regiis monimentis consignata" (*Mat. Par.* 1236, p. 296. *Vide* also *Rot. Pat.* 4, *Hen. III.*) These *Regia monumenta* must have been the very letters of which copies were forwarded to Honorius, and they could hardly have contained anything very burdensome or disgraceful, or Alexander could have scarcely relied upon them for obtaining compensation. The decision of the council, at which Pandulph presided as arbitrator, and to which Hubert de Burgh appealed in justification of his marriage (*Mat. Par. Addit.* p. 99), must have brought about the arrangement at York "in præsentia domini Pandulfi." It was probably a compromise, and apparently in favour of England, as Alexander subsequently obtained farther compensation. With reference to the charges brought against Hubert in 1238, it is worthy of remark that when he was deprived of the office of justiciary in 1232, he was replaced

Many years of peace followed these alliances, affording leisure to Alexander for attending to the internal policy of his kingdom, and his attention was soon directed towards the western provinces of his dominions. Although the southern division of the Oirir-Gael, which was included in *Scotia*, had been the original cradle of the Mac Alpin family after the arrival of the Dalriads in Scotland, the connection between its inhabitants, and the later princes of that race, must have been materially weakened by the establishment of Kenneth, and his successors of the line of Kintyre, upon the banks of the Forth. Cantyre, the leading portion of the original principality of the Clan Gauran, had long been settled by the Gall-Gael, still, indeed, being numbered amongst the dependencies claimed by the Norwegian kings; whilst the remainder of the district once known as Dalriada, was peopled by offshoots from the neighbouring tribes, who appear to have been of Scoto-Pictish, rather than of Scoto-Irish, origin. The territories of the Oirir-Gael, however, had never ceased to be included amongst the dominions of the Scottish kings, being subject, as such, to the spiritual jurisdiction of the bishop of Dunkeld until the division of the diocese; whilst some of the early charters of the Scottish sovereigns contain royal grants of the *Can*, or tribute, of Argyle, attesting their right of jurisdiction over the province in accordance with the earlier system of government.*

by the very Stephen de Segrave who was the English commissioner for negociating the original arrangement in 1219. If Segrave raised the accusations against de Burgh he must have known something about a transaction in which he was a principal actor.

* *Reg. Dunf.* No. 2. *Ergaithel* is here distinguished from *Kentir*. (Here and elsewhere I use *Cantyre* for the district, *Kintyre* for the whole principality.) After the institution of the sheriffdom, the name of Argyle proper marked that district as distinguished from Lorn. The earliest mention of the diocese of Lismore, or Argyle, occurs in a charter from Alexander to Harald, the first bishop, dated in 1228 (*Reg. Morav.*

In proportion as the power of the Gall-Gael declined, the ascendancy of the Oirir-Gael increased; the permanent addition of the southern Hebrides, or Sudreys, to the possessions of Somarled and his descendants, augmenting still further this preponderance. Upon the death of that ambitious chieftain, his dominions appear to have passed to three of his sons, Dugal, Angus, and Reginald, Dugal apparently being the eldest and his father's representative—for he had been chosen by Somarled to rule over Man and the Isles—and his descendants, retaining the original possessions of the family upon the mainland, were subsequently known as Lords of Lorn and Argyle. He died, probably, towards the close of the twelfth century, for about that time a contest between his brothers, Angus and Reginald, is noticed in the A. D. 1192. chronicle of Man, when the victory of the former may have established his right to claim predominance over the whole race of Somarled. Eighteen years later, Angus perished with his three sons in a similar A. D. 1210. battle; and from that time the superiority throughout the western coasts and Highlands was divided between the Clan Dugal of Argyle and Lorn, and the Clan Ronald of the Isles, the latter branch represented by the Clan Rory and the Clan Donald, the descendants of Reginald and Donald, sons of Reginald Mac Somarled.*

No. 32). John Scot was the bishop of Dunkeld, in whose time that diocese was divided (*Fordun*, l. 6, c. 40, 41), but the division is to be ascribed to the policy of Alexander rather than to bishop John's ignorance of Gaelic.

* *Chron. Man* 1192, 1210. Somarled had other sons besides the three to whom his known descendants trace. Olave is mentioned by the *Chron. Man*, Gillecolum by Fordun, and the names of Dugal, Olave, Donald, and Reginald appear, as his sons, amongst the benefactors of the Church of Durham (*Cot. Domit.* vii. fol. 13, 16). The Somarled alluded to in the Anecdotes of Olave the Black was a relation of Dugal's sons, and it was perhaps the son of this Somarled whose death is recorded in *A.F.M.* 1247. Mr. Skene (*Highlanders*, vol. 2, p. 45) is of opinion that the younger Somarled was

From the meagre and barren details of the campaign of Alexander in the Western Highlands, which have been handed down by the chroniclers of a later period, it would be impossible to determine whether it was provoked by any active participation of the provincial magnates in the insurrections in favour of Mac William, or whether the cordial understanding existing between the young king and his brother-in-law, Hubert de Burgh—who, as guardian during the minority of Henry, was the actual ruler of England—prompted Alexander to take advantage of the security of his southern frontier, and extend his authority over the west. In the course
A. D. 1220. of 1220 he had assembled an army at Inverness against Donald Mac Niel, a name unknown to history, with what success it would be impossible to say; though, apparently, he had reason to be dissatisfied at a certain backwardness on the part of some of his followers in attending the royal *host*, or
A. D. 1221. muster. Accordingly, on the second Thursday in the following Lent, it was decided at Perth, by "all the judges of Scotland and Galloway" there assembled, that King William's regulations about "the Ban" should be strictly carried out, and fines levied upon every "Thane, Ogtiern, and Carle," who had failed in the due performance of "the Scottish service" by which he held his land; though, as the

a son of Gillecolum, who reigned as the heir and representative of his grandfather for upwards of fifty years; but the Chronicles of Melrose and Lanercost, Wynton, Fordun, and Major, are all silent about Somarled the successor of Somarled. Boece brings Somarled the son of Somarled "be the Erle of Marche with ane corde about his hals afore the king," not, however, in 1221, but just before the death of Alexander, and upwards of eighty years after the deaths of the real Somarled and Gillecolum; and the tale, which, as usual, is copied by Buchanan, is evidently founded on some confused account of the actual transactions between Alexander and Ewen Lord of Argyle (*Bellenden's Boece*, bk. 13, c. 15. *Buch.*, l. 7, c. 94).

amount of the fine to be assessed upon the Earls for the absence of their Thanes, though alluded to, was not further mentioned, a course which would have been scarcely followed if the earl's retainers had been backward in their attendance, it may be inferred that the great Gaelic magnates, or their representatives, were by this time generally free from disaffection.* During the summer of the same year, Alexander was at York, and after the double marriage celebrated on the 19th of June in the ancient capital of the north, he could have scarcely returned to Scotland, with his English bride, before he gathered around him the contingents of Galloway and Lothian for the invasion of Argyle, and put to sea, probably to avoid the difficulties and delays of a march by land through the mountain passes leading to the Western Highlands. The autumn, however, appears to have been too far advanced, for he narrowly escaped shipwreck, and was obliged to put back with his fleet into the port of Glasgow; but the expedition was only deferred to a more favourable season, and in the following May, after the rigours of a highland winter had passed away, Alexander A. D. 1222. again advanced into Argyle, little or no opposition apparently being offered to the progress of the royal army. All who were too deeply implicated in past rebellions to entertain any hope of pardon, fled for their lives at the approach of the king's forces, and their forfeited territories were distributed, at the royal

* *Stat. Alex. II.* 2. The seventh year of Alexander was from the 9th of December 1220 to the 9th of December 1221; so that the Council at Perth must have been held in Lent 1221, and the muster at Inverness was probably in 1220. It may have been to punish this very backwardness in "the barons" of Scottish Argyle that Alexander undertook the expedition. The regulations about "the Ban" were probably laid down, or regulated, in the preceding reign, as the words of this statute are "as in the laws of King William is declaryt."

pleasure, amongst adherents upon whose fidelity greater reliance could be placed. Nor was the opportunity overlooked for replenishing the royal coffers by the exaction of heavy fines, the majority of the "Barons of Argyle" being permitted to retain their properties, on submitting to pay "the Ban" as a punishment for past offences, and on giving hostages for their future fidelity. No known member of the race of Somarled appears to have been forfeited, the great chieftains of the Oirir-Gael either being too powerful to be summarily dealt with, or, more probably, because backwardness, rather than open disaffection, was the offence of which they were considered guilty.*

A thorough re-construction of Scottish Argyle was the result of the royal success, and it was withdrawn from the jurisdiction of the Earl of Atholl and the Abbot of Glendochart, and, with the whole, or portions, of the neighbouring districts of Cowal and Cantyre, similarly withdrawn from the superintendence of the Earl of Menteith, placed on the footing of the rest of *Scotia*, and known henceforth

* *Wynton*, bk. 7, c. 9, l. 291-98. *Fordun*, l. 9, c. 34. According to the former "the Ethchetys of the lave, to the *lordis of that land* he gave," surely meaning the lords of Argyle. The words of Fordun are "his qui secuti sunt, pro suâ voluntate." The names of the known descendants of Somarled never occur amongst the rebels forfeited for treason, and they were probably too much occupied in extending their authority over the Western Isles to interfere much in the politics of the mainland. At a later period, the Earls of Fife, Mar, and Atholl, with other nobles, became "warrenters" that Ewen of Argyle should pay 320 marks annually for a certain royal grant, which must have been of large extent, for the sum was more than the "annuity" for which Alexander resigned his claims upon Henry in 1237. The grant probably represented (as in the case of Magnus Olaveson, who held his kingdom of Man "at farm" in a similar manner) the hereditary possessions of Ewen—Lorn in short, confirmed and held by the old Scottish tenure of *rent;* or the restoration of some forfeited property. (*Robertson's Index*, p. xi., xvi., xxiv.) The result of Alexander's invasion of Argyle was very similar to that of Malcolm IV.'s conquest of Galloway —the subjection, not the eradication, of the leading proprietary.

as the Sheriffdom of Argyle. The northern division of the older province, under the title of the lordship of Lorn, remained in the immediate possession of the head of the clan Dugal and representative of the elder line of Somarled, who seems to have retained this portion of his ancestral territory on the mainland upon the usual conditions of the ancient Scottish tenure, whilst the rest of the sheriffdom was, of course, more directly under the authority of the royal *Vicecomes*. About the same time the extensive diocese of Dunkeld was divided, and its western portion, corresponding with the newly elected sheriffdom, placed under the superintendence of a separate prelate, whose residence was in the island of Lismore, and who was known as the bishop of Argyle; the reason for this change being—scarcely the bishop of Dunkeld's supposed ignorance of the Gaelic language, which would have bound him, if consistent, to resign the whole diocese, but rather the additional support thus afforded to the royal authority by the appointment of a direct ecclesiastical head of the province; for at this period the bishop, or his seneschal, and the Frank-tenantry upon the church lands, formed an important portion of "the community" which assembled at the county meetings, or performed the duties, incumbent upon their tenure, in the royal army. No confiscations on a great scale appear to have resulted from the campaign of Alexander in Argyle. The race of Somarled still retained their original position as the leading magnates of the province, a position yet held by their senior representative in the female line; and whilst in Moray, and on portions of the eastern coast of Ross, Norman and other settlers were thickly planted upon the lands once held by the adherents of Mac Heth,

comparatively little, if any, change is traceable amongst the "Baronage" of Scottish Argyle.*

In the course of the same autumn, Alexander was at Jedburgh on his way to visit England, when he was shocked at receiving intelligence of the barbarous murder of Adam, bishop of Caithness. The bishop, it appears, had been over-rigorous in exacting tithes and other ecclesiastical dues, which he had increased, principally at the instigation of a monk of the name of Serlo, to double their original amount; and after a vain appeal to Earl John, who declined all interference in the matter, the bonders went in a tumultuous body to the episcopal residence at Hawkirk, where a short and angry conference was brought

15th Sept.

* It was the policy of the Scottish kings to support the Scottish element in the west against the Scoto-Norwegian, and any changes brought about in the "baronage" of Argyle were probably effected in accordance with such a policy, rather than by any general introduction of a foreign element. Cowal belonged traditionally to the Clan Lamond, whose name—*Lagman*—points to a Scoto-Norwegian origin; their connection with the Gall-Gael being confirmed by their appearance amongst the pretenders to the sovereignty of Man, under their Gaelic name of Mac Erchar. In the northern part of the same district will be found Stralachlan, the *Strath* of Lachlan, the ancestor of the Mac Lachlans; and it was also the original home of the Mac Arthurs of Strachur, the senior branch of the Clan Campbell. Both these families are supposed to have acquired their properties by matrimonial alliances with the Lamonds, a similar alliance with the heiress of Paul O'Duinne bringing Loch Awe to the ancestor of the Dukes of Argyle. Traditionary alliances of this description are generally problematical, and the rise of all these families probably dates from this period, whether they are to be looked upon as foreign settlers, or, as is more probable, native proprietors placed in direct dependance upon the sovereign. Their connection with the sheriffdom of Argyle, which they are sometimes supposed to have held "in fee," much accelerated the rise of the Campbells of Loch Awe. It is singular that the MS. genealogies trace this family to King Arthur, whilst none of the Irish accounts of their origin deduce it from a *Milesian* source, regarding them, apparently, as *Fir-Bolg*. There may have been a tradition in early times of their Scoto-Cumbrian origin, traceable, perhaps, to the *British* name of their earliest known ancestor, *Arthur*. The advocates of their Norman descent ought to show that they were ever known as "de Campo bello;" that there ever was such a place to give the title; and if it was the Latin version of their name, what was the name thus Latinized? It would have been *Beauchamp*.

to a close by the double murder of the bishop and his obnoxious adviser Serlo. As soon as he was informed of the outrage, Alexander hurried to the north, to call Earl John to account for permitting this deed of violence; and though the earl was able to clear himself from all suspicion of any active participation in the crime, the king punished him with a heavy fine, and by the forfeiture of half his earldom, for failing to display sufficient energy in avenging the murder of the bishop. All who were concerned in the riot, as well as in the actual perpetration of the offence, suffered according to the degree in which they were implicated, and many years elapsed before the executions, mutilations, and outlawries, by which the deed of blood was avenged, were obliterated from the recollection of the bonders of Caithness. Intelligence of the crime, and of the prompt and speedy vengeance inflicted by Alexander, was immediately forwarded to Rome by the Scottish prelates, who dreaded the advent of a legate who might extend the fines beyond the limits of Caithness; but as a year passed away without the appearance of a papal functionary, their fears gradually subsided, and the earl was allowed eventually to redeem his forfeited territory at the price of another large payment; though nine years later, when John was burnt to death in his own castle, there were many who looked upon the catastrophe of the ill-fated earl as a just retribution for his indirect connivance in the murder of bishop Adam.*

It may have been in consequence of the measures of Alexander in the western Highlands that, about two years after his invasion of Argyle, a member of A. D. 1224.

* *Chron. Mel.* 1222, 1231. *Fordun, Reb. Alb.* p. 355. *Robertson's Index,* l. 9, c. 38. *Ork. Saga in Col. de* p. xxv.

the Mac William family, Gillescop, again made his appearance in Scotland. He was accompanied by a certain Roderic, and as a "baron" of that name had been dispossessed of Bute and Arran, the companion of Gillescop may have been the former proprietor of the forfeited islands. Nothing is known of this revolt beyond its issue—a total failure—and Mac William, destined to be the last of his race, was executed at Forfar with his whole family, not even his infant daughter, a child just born, escaping the axe. Little more is known of the causes of another
A. D. 1228. revolt which occurred a few years later in the Highlands of Moray, in which another Gillescop appears to have been the principal actor. He was probably Gillescop Mahohegan, who, for not bringing his hostages on the appointed day, was condemned at Edinburgh, in his absence, by the unanimous verdict of the judges of Scotland and Galloway, assembled "on the Sunday before St. Denis's day" in the Chapter House of Holyrood. He appears to have been an influential personage in Badenoch, who—perhaps, in consequence of this judgment—broke out into open rebellion, burning several wooden forts, and the greater part of the town of Inverness, surprising and killing Thomas of Thirlestane, a baron of the neighbourhood, in his own castle, and holding his ground for several months amongst his native mountains, until he was captured, in the following
A. D. 1229. year, with his two sons, by the Earl of Buchan, who forwarded to Alexander the heads of his prisoners as the surest testimony that the revolt was at an end.*

* *Fordun*, l. 9, c. 38, 47. *Chron. Lan.* 1230. *Stat. Alex. II.* 3. It is difficult to gather from Fordun whether the insurrection of Gillescop Mac William took place in 1222 or 1224, but it was at any rate *after* the events in Argyle, which may have been the *cause*, but scarcely the *result*, of his incursion. The *Chron. Lan.* places the rising in 1230, evidently confounding the first

Argyle was now a Scottish sheriffdom, and the race of Somarled held their possessions on the mainland as fiefs of the Scottish crown; but they were still feudatories of Norway for their island territories, though their allegiance towards their distant overlord would appear to have sat lightly upon the lords of the southern isles. Man, with its dependencies, was held of the Norwegian crown by the payment of ten marks of gold on the accession of every sovereign, and a similar acknowledgment was probably all that was expected from the lords of the Oirir-Gael, who held the Sudreys.* The proceedings of Alexander, however, appear to have aroused a feeling of mistrust in the mind of Haco, the Norwegian king, which may have been fomented by Olave of Man, who arrived about this time in Norway to seek the usual confirmation of his title, and who must naturally have felt uneasy at the threatening extension of the Scottish power in the neighbourhood of the northern isles. Amongst the partizans of the *Birkbeiners* at the Norwegian court, the wild but faithful adherents to whose attachment Sverre, the grandfather of Haco, had been indebted for his throne, was the Scottish Ospac, who was supposed to have some pretensions to share in the blood of Somarled—he was represented, indeed, as a son of the elder Dugal—and availing himself of Ospac's claim, Haco associated him with Olave, on his return to Man, as the representative of the race of Somarled acknowledged by Norway, providing him with a fleet to support

with the second Gillescop, who was probably the owner of Badenoch, for immediately after this outbreak that district was in the possession of the Comyns, perhaps as a reward for the services of the Earl of Buchan. (*Reg. Morav.* No. 76, which must be dated before 1231, as Walter Comyn, there mentioned, was Earl of Menteith by that time.)

* *Chron. Rob. de Monte* 1166.

his pretensions to the kingdom of the Sudreys. On
A. D. 1230. the arrival of Ospac in the western seas, Duncan and Dugal, who, with a kinsman of the name of Somarled, were then all powerful amongst the southern Hebrides, either from policy or because his claim was really true, received their relative with a cordiality which aroused a suspicion of treachery in the minds of the Norwegians; and, suddenly attacking the Sudreyan chieftains, they seized upon Dugal and Somarled, the latter losing his life in the fray, whilst Duncan only avoided the fate of his kinsman by escaping to the mainland, through the connivance of his newly found brother. Haco's intentions, however, were frustrated by the death of Ospac, who lost his life, shortly after this attack upon the Sudreyan lords, in storming a castle in Bute; and after a few descents upon Cantyre, in which they sustained quite as much damage as they inflicted, the Norwegians returned to their own country, and the Sudreys again reverted to the lords of Argyle.*

The last of those attempts against the reigning family, which had once shaken the throne to its foundation, resulted only in a miserable failure, and the names of Mac Heth and Mac William, which once would have rallied around them half the kingdom, barely sufficed, latterly, to raise a single barony. Henceforth the whole of the western coast was closed against attack. Caithness, after the death of Earl

* *Anecd. of Olave. Chron. Lan.* 1230. The title of king of the Sudreys is given by the Norse writers to the elder Dugal, to Duncan and his brother Dugal, and to Ewen, from whom it was transferred during the expedition of Haco to Dugal Mac Roderic, head of the senior branch of the Clan Reginald. The family of the elder Dugal were evidently at this period the acknowledged *Seniors* of the whole race of Somarled; the division of the family into the lords "de Ergadia" and "de Insulis" resulting probably from the policy of the Scottish kings.

John, was placed in the hands of a scion of the house of Angus; whilst Sutherland was erected into a lordship, if not into an earldom, in favour of the northern branch of the powerful family of Moray, which had already largely profited by the forfeitures of the earls of Orkney.* Ross was in the possession of Ferquhard Mac-in-Sagart, whose interests were bound up in the maintenance of the royal authority, and whose fidelity appears to have been rewarded by large grants in northern Argyle. The lords of Lorn and of Argyle had learnt to appreciate the power of the sovereign, since the appearance of the royal forces amongst the mountains and islets of the west, and felt little inclination to risk the loss of their newly confirmed fiefs by affording any countenance to the

* As John Haraldson, who became sole Earl of Caithness on the death of his brother David, gave up his *daughter* to William in 1214, it is highly probable that she was his heiress. (*Fordun*, l. 8, c. 79.) *M.* Earl of Angus, who witnessed a charter on the 22d April 1231—the year of Earl John's death—signs himself on the 7th October 1232 *M.* Earl of Angus and *Caithness*, and again in 1236 *M.* Earl of Angus only (*Reg. Dunf.*, No. 80. *Reg. Morav.*, No. 110. *Lib. Holyrood*, No. 58). He was evidently Malcolm Earl of Angus who took a prominent part in the convention at York in 1237 as *Comes Malcolm*, for no other Scottish earl there present bore that name (*Fœd.*, vol. 1, pt. 1, p. 233-34), and he must have held Caithness *in ward*. Who was the heir? Certainly not his uncle, Magnus son of Earl Gillebride, but very probably *the son* of Magnus by Earl John's daughter; the supposed grant of the earldom to this Magnus being probably grounded upon his real marriage with the heiress. If on the death of Earl John in 1231 his grandson was an orphan and a minor, his wardship would naturally have been granted to the next of kin, his cousin the Earl of Angus. The earldom of Angus passed by the daughter of this Malcolm to the Umphravilles, and the two Gilberts, who sometimes appear in the Caithness pedigree, are evidently the Umphravilles, father and son, grafted on the wrong family tree. All Sutherland to the boundaries of Ross was possessed early in the thirteenth century by Hugh son of Freskyn. His son, William, calls himself Dominus de Sutherland, and in 1275 there had certainly been two earls of that name, "Willelmum clare memoriæ et Willelmum ejus filium, *comites* Sutherlandiæ." Their possessions were probably the portion of the old earldom of Caithness belonging to the heirs of Erlend Thorfinson, which they may have acquired through a natural unwillingness on the part of William that his enemy Harald and his family should profit by the extinction of the other branch (*Reg. Morav.* Preface and four first charters).

opponents of the reigning family. Bute and Arran, in the hands of the Steward of Scotland, secured the entrance of the Clyde, and protected the coasts of his barony of Renfrew from a repetition of the invasion of Somarled; whilst Galloway, under the rule of Roland and his son Alan, who now held the high office of Constable, had long ceased to harbour any of the sovereign's enemies, since the lords of the province had been numbered amongst the staunchest supporters of the throne. No portion of the western coast afforded any longer a point upon which a hostile expedition could land, and gather strength; and the complete cessation of the attacks of adventurers from Ireland, after the extension of the royal authority over the provinces of the north and west, affords a convincing proof of the support which must have been derived, by such pretenders, from the habitual disaffection hitherto prevailing amongst the leading chieftains of those Highland districts.

A. D. 1231. Ten years had now elapsed since the marriage of Alexander with the princess Joanna, and as long as Hubert de Burgh retained his influence at the court of England the two countries were undisturbed by the slightest difference. Henry had been with difficulty dissuaded from strengthening still further his connection with Alexander by an union with his youngest sister, Marjory, a princess of exceeding personal attractions; but Richard the Mareschal, and many other English barons, opposed the projected alliance, representing the impossibility of the king choosing a lady for his queen, whose elder sister was the wife of one of his own subjects.* Henry yielded

* *Mat. Par.* 1231, p. 254. He elsewhere describes Marjory as "puella elegantissima." Henry appears to have been as great an admirer of beauty as his astrological brother-in-law, the emperor (cui), "ultra modum placuit

reluctantly to their remonstrances, but his feelings towards Hubert must have been additionally embittered by the consciousness that it was the union of the Earl of Kent with Margaret of Scotland which prevented his own marriage with the princess of his choice; and this aversion was industriously strengthened by De Burgh's old enemy, the foreign bishop of Winchester, who had recently returned to England in the hope of supplanting the all-powerful justiciary in the favour of the youthful king. Alexander was still childless, and it was insinuated that the crafty Hubert had designedly prevented Henry from marrying the elder princess of Scotland in order to secure, for himself, the rich prize of the inheritance of his bride. The fall of De Burgh followed shortly afterwards, and the influence of Peter des Roches, the favourite adviser of John, soon became apparent in the English councils, from the revival of the old attempts against the liberties of Scotland.

Not long after the disgrace of the English justiciary, the death of Alan Fitz Roland brought about a temporary disturbance in Galloway. Of the three daughters who survived him, for he left no male heir, the eldest, Helen, was the wife of Roger de Quinci, Earl of Winchester, who became, in her right, Constable of Scotland; whilst the two others, Christina and Dervorguil, the children of Margaret of Huntingdon, were married respectively to William de Fortibus and John Balliol. The Galwegians, unwilling that their province should be dismembered between the heiresses, besought Alexander to preserve its integrity by declaring it a fief lapsed to the

A.D. 1234, 2d Feb.

decoris inspectio puellaris;" and it was only through fear of offending Louis of France that he was prevented from marrying Joanna of Ponthieu "propter elegantiam suam."

crown; but as the king refused to listen to their request, they invited Thomas, a natural son of their late lord, to assert his claim upon the principality, and at once assuming the offensive, carried fire and sword throughout the frontier districts of Scotland. Alexander summoned his followers to repress the
A. D. 1235. rebellion, and, in the following July, he had advanced far into the revolted province, when he was unexpectedly attacked by the insurgents, who, watching his march from the neighbouring hills, seized upon an opportunity of falling upon the king's forces whilst they were entangled in a marshy spot, ill adapted for the movements of mounted men-at-arms; and it would have fared ill with the royal army had not the Earl of Ross, who was in attendance with the contingent of his earldom, led his active and light armed mountaineers around the flanks of the enemy, intent only upon the attack, launching them upon the rear of the Galwegians, who thus assailed both in front and from behind, broke and fled in disorder. They were closely followed by the whole Scottish army, until darkness put an end to the pursuit; but as a love of bloodshed formed no part of the character of Alexander, he readily granted a free pardon to all the insurgents who appeared before his tent, on the following morning, with ropes around their necks in token of submission; and on his return from his successful expedition he celebrated at Berwick, with every mark of honour, the marriage of his sister, Marjory, with Gilbert the Mareschal, the youthful Earl of Pembroke.*

The leaders of the revolt were still at large, for Thomas and his chief supporter, Gilroy, escaping from the scene of their defeat, fled to Ireland, the

* *Chron. Mel.* 1234-35. *Fordun*, l. 9, c. 49.

invariable asylum, in those days, of all Scottish refugees. Hugh de Lacy, whose daughter was the widow of the late lord of Galloway, was soon won over to join in the alliance against the heiresses of Alan, Olave, king of Man, the father-in-law of Thomas, uniting willingly in the same confederacy; and strengthened by the assistance of such powerful allies, Thomas and Gilroy again sought the shores of Galloway, the confederates binding themselves to mutual fidelity by one of those barbarous, and semi-pagan, ceremonies which lingered amongst the wilder tribes of Ireland and the west of Scotland. Each of the party shed a few drops of his blood into a bowl; wine was then added, and all, in turn, lifted the bowl to their lips in token of inviolable union; whilst still further, to mark their determination to conquer or to die, the ships which had borne the devoted band from Ireland were burnt, by order of Gilroy, that every chance of retreat might be cut off. All this anxiety on the part of the leaders of the expedition seems to betray a lurking suspicion of the Irish auxiliaries, who formed the greater part of their following; but it failed lamentably in its intended purpose, only retarding for a brief period the final dissolution of the confederacy.

Upon receiving intelligence of this second inroad, the bishop of Galloway, with the abbot of Melrose, and the earl of Dunbar, anxious to save the son of their ancient friend from the consequences of his fresh rebellion, advanced to meet him upon the borders of Galloway, and whilst the churchmen employed their eloquence in dissuading Gilroy from his enterprise, Earl Patrick supported their arguments by the display of a goodly band of mounted men-at-arms. Perceiving that he was no match for the

earl's retainers, Gilroy fully admitted the force of the bishop's reasoning, and, throwing himself upon the king's mercy, regained his liberty after remaining for a short time in the custody of the Earl of Dunbar. The fate of Thomas is more uncertain. Obliged to follow the example of Gilroy, he was also released, according to one account, after a brief confinement in Edinburgh Castle; but if the Lanercost Chronicle is correct, he was delivered into the hands of John Balliol, and retained as a hostage in close custody, languishing for upwards of fifty years in the dungeons of Bernard Castle. The luckless auxiliaries fared the worst, for, without the means of returning to Ireland, as no stipulation had been made for their safety, they wandered helplessly towards the Clyde, and were set upon and massacred by the citizens of Glasgow. Two only of their number, the eldest of the party, were preserved from the fate of their fellow-sufferers, no feeling of commiseration, however, dictating their reprieve, for they were only saved from immediate execution for the purpose of being torn by wild horses at Edinburgh.*

A. D. 1247. The troubles of Galloway were appeased for a time, but about twelve years later the province was again disturbed through the oppressive tyranny of Roger de Quinci, whose exasperated tenantry rose and besieged their lord in one of his own feudal

* *Chron. Mel.* 1234-35. *Fordun*, l. 9, c. 49. *Chron. Lan.* 1285. *Mat. Paris* 1236, p. 294. The Chronicle of Melrose places all these events in 1235, Mat. Paris in April 1236. As Thomas and Gilroy escaped to Ireland in July 1235, it is probable that both authorities are partly right, and that his return and second attempt took place in April 1236. The account of the fate of Thomas contained in the Lanercost Chronicle appears to be borne out by the mention, in *Robertson's Index*, p. xvi. xvii., "of certain Rolls about business touching John de Balliol and Thomas of Galloway, and of a letter of John de Balliol, about giving up to the king of Scotland Thomas of Galloway with his wife and sons."

castles. Roger defended himself with determined courage, until his provisions beginning to fail, and entertaining little hope of mercy, he decided upon making one last and desperate effort to escape. The gates of the castle were suddenly flung open, and the earl and his men, precipitating themselves upon their assailants, by whom such an attack was totally unexpected, cut their way through the ranks of their opponents, and rode for their lives to the court of Alexander, who soon reinstated De Quinci in his possessions.*

The time had at length arrived for Alexander to take serious notice of the machinations of the English court against the liberties of his kingdom, the encroaching spirit of the late king's policy having revived with the return of the Poitevin, Peter des Roches. The first symptom of this change was displayed in the resuscitation of the dormant claims A. D. 1233. of the see of York, and the appeal of the archbishop of that diocese to officiate at the coronations of the kings of Scotland, in exercise of a right which it was incumbent upon the majesty of England to uphold, was duly approved, as it had probably been suggested, by Henry and his confidential advisers.† During the two following years, Henry was too much occupied by the internal commotions of his own dominions to renew his pretensions against the kingdom of his brother-in-law; but after the death of Richard the Mareschal had paved the way to a reconciliation with his revolted barons, he was once more at liberty to tread in the footsteps of his father. Accordingly, in consequence of a representation laid before the A. D. 1235.

* *Mat. Paris* 1247, p. 496.

† *Fœd.*, vol. 1, pt. 1, p. 209. The appeal of the archbishop was duly proclaimed throughout the kingdom. *Rot. Pat. ad an.* 17, *Hen. III.*

court of Rome, in which the treaties of Northampton and Norham appear to have been adroitly confounded with the convention of Falaise, a letter was obtained from the Pope, urging Alexander to fulfil the obligation which bound him, with the earls and barons of his kingdom, to tender liege homage and fealty to the English king, and authorising the archbishop of York, and the bishop of Durham, to add their exhortations to the papal admonition.* Alexander had hitherto refrained from taking any advantage of the
A. D. 1236. disputes between Henry and his barons; but when he was threatened with the revival of such dangerous claims, he met them, in the usual manner of the age, with a counter-claim, at once asserting his own rights

* Gilbert the Mareschal was admitted to terms in June 1234. On the 4th of January 1235, Pope Gregory writes that the king of England had *lately* represented to him that an amicable convention had been formerly arranged between Henry and John on the one part, and William on the other; in accordance with which William and Alexander performed homage and swore fealty to the kings of England for themselves and their successors, together with the earls and barons of Scotland, who became bound to hold by the English kings if their own sovereigns fell off from this convention: with more to the same purport, copied from the treaty of Falaise. A clause in the subsequent treaty of York proves that no such "amicable convention" existed; for after covenanting for the mutual restoration of all writings and instruments relating to the Scottish marriages, or to the agreements connected with them which had been entered into by John and Henry, or William and Alexander, a reservation was made, "quod si in ipsis scriptis vel instrumentis aliquæ capitula, negotium præsens non tangentia, inveniantur, quæ alterutius Regum utilitatem contineant, *debent prædicta capitula per utriusque Regum literas innovari.*" Had the treaties between John and William contained anything like a renewal of the convention of Falaise, such an arrangement would have been retained in force by this clause; and as no such letters exist amongst the English archives, it is very evident that no agreement of this description had ever been sanctioned either by William or Alexander. "The amicable convention between Henry and John on the one part, and William on the other,"—an impossible combination of characters, of which every contemporary historian was ignorant—must take its place amongst the numerous *myths* of a similar description, fabricated to support the English claims. Indeed, it appears to have been so completely forgotten, that it was neither alluded to in the treaty of York, nor revived in Edward the First's letter to the Pope. *Vide Fœd.*, vol. 1, pt. 1, p. 214, 215, 233, pt. 2, p. 932.

to the northern counties, and threatening to support his pretensions with the sword. With the view of adding to the number of his supporters, perhaps, in case of an appeal to arms, he bestowed the hand of his remaining sister, Marjory, upon Gilbert the Mareschal, who had succeeded to the ascendancy of his brother Richard in the councils of the English national party; and upon the reception of the papal admonition already mentioned, he commissioned his envoys to present themselves at the council of London, and demand the chartered rights of their king.* No definite answer was returned at the time, but, in the course of the same year, Henry met the Scottish king at Newcastle, when Alexander, repeating his demand, maintained that he could prove the justice of his claim by the testimony of the barons of Northumberland and the best men in England, as well as by charters and other documents; asserting that it was infamous to annul the promises of a king, when they were supported by the testimony of his own nobles. The majority of the English barons threw the whole weight of their influence upon the side of Scotland, reminding Henry of the danger of provoking a war upon his northern frontiers whilst Wales was disturbed and France hostile; above all, when the cause of Alexander was just: and it was mutually agreed that the countries should remain at peace until the conclusion of a satisfactory arrangement. The whole question was finally set at rest in the following year, at a great council held at York in

28th April.

A. D. 1237.

* *Mat. Paris* 1236, p. 294. An attention to dates shows that Alexander did not raise his claim until *three years* after Henry sanctioned the appeal of the Archbishop of York. The English king was undoubtedly the aggressor; yet Lingard represents him as the aggrieved party, resisting the claims of Alexander by an appeal to the Pope. How an appeal to the Pope, made in January 1234, could have resisted claims put forward in April 1236, is a mystery which I do not pretend to solve.

the presence of Otto the cardinal legate, when Alexander bound himself to renounce all farther demands upon Henry, in return for a grant of lands in the northern counties of the annual value of 200 pounds, for which he performed the usual homage: and thus were compromised, after the lapse of nearly a hundred years, all the claims which the Scottish kings had never ceased to assert upon the patrimony of their maternal ancestor, Waltheof.*

After the conclusion of the treaty of York, the Queen of Scotland returned with her brothers to the south, her adopted country seeing her no more, as her health had been long declining, and she died in
A. D. 1238. England in the following March. About nine months before the death of the queen, John Scot, Earl of Chester, Lincoln, and Huntingdon, the last male heir of Earl David, was poisoned by his wife, a daughter of Llewellyn of Wales—such is the account of the contemporary historian—his English fiefs reverting to his sisters, subject to the superiority of their cousin, the king of Scots. A year elapsed after

* *Chron. Mel.* 1236, 1237. *Mat. Paris* 1236, p. 295; 1237, p. 301. *Fœd.*, vol. 1, pt. 1, p. 233. The Scottish demands for satisfaction were for—1. The old claims on the northern counties. 2. The non-performance of John's agreement in return for 15,000 marks given "pro habenda benevolentia domini nostri . . . et pro conventionibus tenendis quæ inter ipsum et nos factæ et per cartas nostras hinc et inde confirmatæ sunt." 3. The breach of the agreement between John and William relating to the marriages of the Scottish princesses. 4. A similar breach of the agreement between Henry and Alexander touching the marriage between the former and the princess Margaret or Marjory—it is difficult to say which. It may be a question how far the original "charters and letters" of John and William were cancelled by the remission of half the sum to be paid *pro quodam fine* (*Robertson's Index*, p. xx.) Paris says the cause of Alexander was just, and this treaty appears to bear out the remark of that historian. Fifteen thousand marks were offered for the northern counties by William to Richard; the same sum to John *pro quodam fine.* Richard offered the counties *without their castles.* Alexander obtained lands of the yearly value of two hundred pounds in the northern counties, *without any castles.* This compromise was not unlike the offer of Richard.

the death of Joanna of England before Alexander sought the hand of Mary de Couci, a daughter of Ingelram, the head of the great French family of that name; Walter the Steward, and the Bishop of Glasgow, were deputed to conduct the future Queen of Scotland to her new kingdom, and upon the 4th of September 1241, a prince was born, who was A. D. 1241. destined within a few years to succeed his father as Alexander the Third.*

When the King of England was drawn into a war with France from espousing the cause of his mother Isabel and her husband, the Count de la Marche, he displayed his reliance upon the honour of Alexander by committing to the charge of the Scottish king the custody of the English marches;

* *Chron. Mel.* 1237-9, 1241. *Mat. Paris*, p. 301. One of those singular assertions by which the competitor Bruce endeavoured to set aside the undoubtedly prior claim of Balliol to the Scottish crown is connected with this period. He maintained that Alexander, *on the verge of senile old age*, and despairing of an heir, with the unanimous consent of his clergy and baronage assembled in council, pronounced Robert Bruce, *the son* of Isabella, to be the heir to the crown in preference to Dervorguil, *the daughter* of the elder sister Margaret. As late as the middle of the year 1237, John Scot, Earl of Huntingdon and Chester, was the heir male of Earl David. In March 1238, nine months after his death, died the queen of Scotland. Alexander remarried in 1239, and a prince was born in 1241. The date of this supposed occurrence must lay between June 1237 and September 1241 at the very latest, though it is certainly as difficult to imagine how the king could have despaired of heirs at any time after the death of his first queen, as to conceive how a man between thirty-nine and forty-three—only twelve years older than Bruce himself, who survived Alexander for *six and forty years*—could be described as verging on a senile old age; or to conjecture how a transaction of such importance could have escaped the notice of every contemporary historian! But even if the king had despaired of heirs before he was forty years of age, Earl David's daughters were never the heiresses of the crown during the lifetime of Alexander, whose sister Isabella was alive in 1253 (*Mat. Paris*, p. 581); whilst the accusation against Hubert de Burgh, that he had married the princess Margaret "*cum spe regni Scotorum si fratrem supervixisset*" (*Mat. Paris*, p. 259), clearly proves that *his own sisters* were looked upon as the heiresses of Alexander if he had died childless. The claim of Bruce is only another instance of the effrontery with which the most groundless pretensions were put forward in those days. *Vide Palgrave's Doc. etc., Introd.* xv., ap. 19.

though he failed not, at the same time, to ensure the friendship of his ally, by betrothing his infant daughter Margaret to the newly-born prince of Scotland, and by at length putting him in possession of all the lands which had been assigned him, four years before, by the treaty of York.* A catastrophe, however, that occurred in Scotland during the absence of Henry upon the Continent, all but led to a rupture between the kings. At a tournament held near Haddington, Walter Bisset, a powerful baron, descended from a Norman family which had acquired large possessions in the earldoms of Mar and Moray, encountered Patrick of Galloway, Earl of Atholl, a young nobleman of great promise, whose father, Thomas, the younger brother of Alan the Constable, had acquired the earldom by his marriage with Isabella, the heiress of the fief. Bisset was overthrown by his youthful competitor, and as a feud appears to have existed between the families, his defeat aroused a fierce desire of vengeance in the breasts of his kinsmen and followers; and on the night after the tournament, the unsuspecting earl, who is said to have been vainly warned of his danger by the wife of his enemy, was burnt to death, with two of his attendants, in the house where they were sleeping at Haddington. Some said the building had been fired to conceal a previous murder; others declared that wood had been purposely heaped up on every side to prevent the escape of the inmates; whilst the Earl of Dunbar, and all the friends and partizans of the sufferer, united in denouncing the Bissets as the perpetrators of the crime, accusing Walter of instigating his nephew John to the commission of the actual murder. Nor did they stop here, for they aimed at eradicating

* *Mat. Paris* 1242, p. 395. *Fœd.*, vol. 1, pt. 1, p. 244.

the very name of Bisset from the land, openly charging the head of the family, William Lord of Aboyne, with abetting the bloody doings of his kinsman. It was in vain that William protested his innocence, whilst the queen offered to prove that he was in attendance upon her at Forfar on the actual night of the catastrophe; for the royal party had been staying at the castle of Aboyne, and, after the departure of Alexander, the Queen was returning southwards, under the escort of William Bisset, on the very day of the tournament at Haddington. It was in vain, also, that he caused his chaplains to excommunicate all who were implicated in the murder, entreating the bishop of Aberdeen to publish a similar sentence throughout the diocese. His cognizances had been recognised in the town of Haddington; his retainers had been seen during the night of the fire; and these were sufficient proofs of guilt in the eyes of John the Red Comyn, and his uncle, the Earl of Menteith, to justify their harrying the lands of the obnoxious baron, who sought shelter from their attacks within the walls of his castle of Aboyne.

Incensed at this lawless outrage, for he had already appointed a day for the trial of William Bisset at Forfar, Alexander dispatched a party of his immediate personal retainers to the north, forbidding the Comyns to prosecute their private feud, and charging the authorities of Mar to see to the safe conduct of the accused to the place of trial. On the appointed day, Bisset arrived at Forfar, and offered to prove his innocence by wager of battle, declining to submit to the judgment of his peers, the course suggested by his enemies, probably on the plea that they were prejudiced against him, and preferring, with good reason, to throw himself on the

mercy of the king. Alexander postponed his decision until the assemblage of the great *Moot* at Edinburgh, in which it was determined that the Bissets should be banished from the country, forfeiting all their possessions, and only escaping death by swearing on the sacred relics to devote the remainder of their lives to warring against the infidel, for the benefit of Earl Patrick's soul. Even after their sentence was made known, it was with difficulty that they eluded the murderous designs of their enemies, and the king was obliged to conceal them for three months before an opportunity occurred for conveying them, with the utmost secrecy, out of the kingdom.*

A. D. 1243. The oath which they had so solemnly sworn in the great council at Edinburgh seems to have sat lightly on the consciences of the Bissets, nor do they appear to have considered it at all incumbent on them to peril their own lives in a foreign land, for the

* *Chron. Mel.* 1242, 1243. *Mat. Paris* 1242, p. 397. *Fordun*, l. 9, c. 59, 60. *Wynton*, bk. 7, c. 9, l. 467 to 594. Such appears to be the substance of this story. Paris distinctly charges Walter with the murder; the chronicle asserts that John was the actual perpetrator of the deed, at the instigation of his uncle; and this seems to have been the truth, for though both William and Walter appear to have returned to Scotland (if indeed the former ever left the country), John, as if despairing of pardon, or through fear of retaliation, settled permanently in Ireland. John was also the especial object of the vengeance of Patrick's brother, Alan. Neither Wynton nor Fordun allude to John or Walter, but they dwell upon the absence and innocence of William, slurring over the actual catastrophe, about which the earlier historians are positive and diffuse. This difference is attributable to the altered circumstances of the period in which the later writers flourished. The name of Comyn was most unjustly held in detestation, whilst the brilliant successes of the great restorer of Scotland's liberties shed a lustre upon his party which few of them deserved. To this party the Bissets belonged; hence Fordun and Wynton, biassed by the prejudices of their age, eagerly dilate upon the undoubted innocence of William, and make no allusion to the really guilty parties. This leaning of Fordun in favour of the party whose representatives became *the patriots* of his days can easily be detected in his accounts of the reigns of the Alexanders, though, had he lived at that time, he would probably have been a sturdy supporter of the Comyns and the *national party*.

good of their murdered victim's soul. John crossed to the opposite coasts of Ireland, where he received a large grant in Ulster from the head of the De Burghs, narrowly escaping with his life, when Alan, a natural son of Thomas of Galloway, harried his lands, burnt his castle, and massacred his people, in revenge for the murder of his half-brother, Earl Patrick.* Walter sought refuge at the English court, where he represented himself as the victim of a rebellious faction which the Scottish king was totally unable to control. He denied the right of Alexander to deprive him of his lands, artfully asserting that as Henry was the superior lord of Scotland, his consent ought tó be obtained before any baron of that country could be forfeited; whilst he also sought to rouse the anger of the English king against his kinsman and ally, by representing that the latter had afforded shelter to Geoffry de Marisco, a condemned traitor flying from the sentence of the English court. The crafty exile had adroitly chosen his time, for the weak and fickle Henry, ever a tool in the hands of others, had just returned from an inglorious expedition into France, and was eager to find an excuse, however trifling, for venting his

* *Fordun*, l. 9, c. 62. John's son held large possessions under the Earl of Ulster in 1279 in the Glens of Antrim, and became the ancestor of the Clan Eoin Bisset of the Glynnes, who gradually assumed the name of Mackeon. True to their old ties, the Irish Bissets held to "the rebellious Scots," and were forfeited in consequence by Edward II. in 1319 (*Vide Reeves's Ecc. Hist. of Down, etc.*, pp. 288, 325). It is very doubtful if William Bisset was ever forfeited, for in 1244 Alexander removed Melville and Montealt from the office of Justiciaries of Scotland for not repressing the attacks of the Comyns on *the lands of William Bisset*. The vacant office was bestowed upon Alan Durward, whose rivalry with the Comyns may date from this appointment. The name of Montealt appears subsequently amongst the national party. The division of the office of Justiciary of Scotland led to the subsequent appointment of *two* Justiciaries, one for Scotland between Forth and *the Mounth*, the other for Scotland beyond *the Mounth*. (*Fordun*, l. 9, c. 62. *Reg. Glasg.* Nos. 179, 183.)

chagrin at his failure. The conduct of the Scottish king during the absence of his ally could scarcely justify a doubt of his loyalty, or suggest any apprehension of a change in his friendly feelings; though ever since his marriage with Mary de Couci—a member of a family which, as French, was necessarily supposed to be hostile to English interests—the bonds of intimacy between the kings had imperceptibly become relaxed. A report next reached Henry that Alexander, who may have heard of the machinations of Bisset against the liberties of his kingdom, had asserted with indignation that he never had been the vassal of England for a particle of Scottish land, and that he never would acknowledge such dependance upon her sovereign. Everything, therefore, appeared to favour the designs of the banished traitor for promoting a rupture between the two kingdoms, and Henry, in anticipation of the impending contest, secretly engaged his wife's uncle, Thomas of Savoy, who was at that time Count of Flanders, to cross the channel with a considerable force, and support his attempt upon the dominions of his former ally.*

A.D. 1244. Both parties prepared for war. Henry addressed letters to upwards of twenty of the native Irish chieftains, exhorting them to unite with the English justiciary in affording every assistance to the cause of their liege superior, whilst he ordered the con-

* *Chron. Mel.* 1244. *Mat. Paris* 1242 (p. 397), 1244 (p. 432). Bisset's arguments clearly show the real situation in which a Scottish king would have been placed had he held his kingdom as a fief of the English crown. It would have been contrary to one of the clauses of the Convention of Falaise—a clause to which Henry III. made especial reference in his letter to the Pope—to have afforded shelter to Geoffry de Marisco. Fordun carefully conceals the name of Walter Bisset, and though he frequently quotes from the Chronicle of Melrose, scruples not to write "quidem Scotus *cujus nomen in Chronicis reticetur.*"

centration of the whole military force of England upon Newcastle-on-Tyne.* Five thousand knights, in obedience to his summons, gathered around the banner of their sovereign, with a body of infantry numerous in proportion; and deep was the indignation of the haughty barons of England, when the Count of Flanders joined this vast array with his promised contingent, an insignificant addition, in point of numbers, to the brilliant ranks of the English chivalry, who proudly deemed their own forces amply adequate to effect every purpose of their royal master, without the aid of foreign mercenaries. Less fortunate than his adversary, Alexander was disappointed of the succour he expected from abroad, for a body of troops, dispatched from France by John de Couci to the assistance of his brother-in-law, was intercepted on the passage, and never reached Scotland. But in the attachment of his own people the Scottish king possessed a surer source of strength than in any assistance he could have derived from foreign auxiliaries, and a hundred thousand men, pledging their fealty to their sovereign at Caldenlee, rallied round his standard in the hour of danger. A thousand only were mounted—on good and serviceable horses, says the English chronicler, though not of the costly breed of Spain and Italy; the rest were on foot, but all were animated with the same determination to support their royal leader in a just cause, and defend the liberties of their native land. Such was the army with which Alexander marched into England, thus anticipating the threatened invasion, establishing himself in an entrenched camp near Ponteland, in Northumberland, for the double purpose of observing the movements of the hostile force at Newcastle,

* *Fœd.*, vol. 1, pt. 1, p. 256. *Rot. Pat. ad an.* 28, *Hen. III.*

and of awaiting the reinforcements promised by his powerful English connections, as well as by the barons of the adjoining country.*

The resolute bearing of Alexander was not without effect, especially as the English nobility had from the first been averse to the war, many of the northern barons being, openly or secretly, in favour of the Scottish king. The loss of their continental possessions had long since begun to tell upon the descendants of the Norman conquerors; the national character of Englishmen was in process of formation; and an intense and not unnatural jealousy of foreigners, and of their influence in the royal councils, was amongst the earliest consequences of the change. The English barons wished for peace in the land which they regarded as their home; and recollecting the evil days of John and his foreign riders, they viewed with contemptuous aversion the little band of Thomas of Savoy, greedy only, as they asserted, after English gold. Very different were their feelings towards Alexander, for the spirit of rivalry which was subsequently engendered between the two nations by centuries of strife and bloodshed, was as yet undeveloped and unknown.

* *Mat. Paris* 1244 (p. 432, 436). *Fordun*, l. 9, c. 61. In the description of the Scottish king and his army, the English chronicler is here followed almost literally. *Caldenlee* was the spot where Calder Water runs into the Tweed in Selkirkshire; *Ponteland*, a place a few miles to the north of Newcastle, upon the river Pont, just before it falls into the Blythe. (*Macpherson Geogr. Illust.* and *Camd. Brit.*, vol. 2, p. 1087.) The words of Paris mark the complicated character of this contest, and the different feelings entertained towards the Scots by the English in those days. They have scarcely been sufficiently attended to. "Communivit etiam idem Rex castra Anglis contermina, et a magnatibus *affinibus et confinibus* instanter auxilium contra Regem Angliæ, sibi adversa machinantem postulavit. Et concessum est ei animo volenti a multis optimatibus et potentibus auxilium in tempore necessitatis postulatum." At that date the Northumbrians were as often found in the Scottish as in the English ranks, the *Yorkshire* barons being the opponents of David at Northallerton—when the Northumbrians fought on the Scottish side—and the captors of William at Alnwick.

For seventy years the Scots had never crossed the Borders except in the character of allies of the national party, and their king, connected by blood with many of the English nobility, was the personal friend of nearly all, and popular amongst all ranks, for the same frank and genial qualities that endeared him to people of his native land. Nor was it forgotten by the followers of Henry, that the land beyond the Tweed might again afford the shelter which it had already yielded to many who sought a refuge in times of trouble and disaster. Such considerations induced the majority of the English barons to wish to avoid the risk of a doubtful contest, in which the determined attitude of the Scots warned them that even victory might be purchased at too dear a price, by a peaceful settlement of the points in dispute. Richard, Earl of Cornwall, and the Archbishop of York, were amongst the warmest advocates of peace, and to their hands, when an arrangement was agreed upon, the whole conduct of the negotiations was entrusted. The points urged by Henry against Alexander were: that he had afforded shelter to Geoffry de Marisco and other English traitors and exiles, therefore exhibiting an intention of withdrawing his homage and of entering into an alliance with France; and that Walter Comyn, and other Scottish lords, had built two castles in Galloway and Lothian, to the prejudice of the rights of the English crown, and to the detriment of the English lieges. It does not appear that he obtained satisfaction on any of these points except the French alliance—perhaps the sole real cause of the quarrel—for Alexander only bound himself, by a written agreement, to enter into no confederacy 14th Aug. with the enemies of the king of England, and neither to invade nor injure in any manner the territories of

that sovereign, whether in England, Ireland, or elsewhere, unless he were himself unjustly dealt with; a similar document being, at the same time, signed by Henry, binding that king never to declare war against Scotland except in self defence. Alan Durward, Henry Balliol, David Lindsay, and William Giffard, "swore on the soul" of their royal master that he would hold to his plighted faith; four of the Scottish bishops, and many of the earls and barons, affixed their signatures to the treaty, pledging themselves to afford no assistance to their king in any unjust war against England; and a counterpart of the same agreement was signed by the English nobility, and placed in the hands of Alexander, as a similar guarantee for the security of his own kingdom from aggression. The completion of this arrangement re-established the relations between the two countries upon their former amicable footing; both kings withdrew their armies from the frontier; Alexander relinquished the entrenched camp in which he had defied the power of Henry—and thus melted away the threatening cloud which had been raised by the intrigues of the renegade Walter Bisset.*

* *Mat. Par.* 1244 (p. 436, 437). *Fœd.*, vol. 1, pt. 1, p. 257. Amongst the "negotia tangentia Angliam" removed by Edward I., was "The last treaty between Henry king of England and Alexander king of Scotland at Newcastle-on-Tyne that *neither* shall wage war against the other except in self defence, to which the seals of the Earls of Glos'ter and Hereford are not appended, and it appears that they were always wanting." (*Robertson's Index*, p. xxi., and *Fœd.*, vol. 1, pt. 2, p. 616.) The original document is lost or destroyed, but it may be gathered from this description that the agreement was *mutual*, and that the copy of the treaty made over to Alexander was guaranteed by the signatures of the English nobles, in the same manner as the copy in the *Fœdera* is witnessed by the Scottish nobles. One of the obnoxious castles was that of Hermitage, and as it still remained standing, and no clause was inserted in the mutual treaties for giving up fugitives, it is evident that Henry must have waived his demands on both these points. At the close of the letter in which Henry confirms the oath sworn by the Earl of Cornwall in his name, is the following paragraph:—"Et mandatum est domino regi Scotiæ quod illud castrum ei daret." *Illud castrum* can only

After the conclusion of the treaty of Newcastle, the external peace of Scotland was never again disturbed during the reign of Alexander, who was, henceforth, at liberty to prosecute his favourite project of carrying out the further extension of his authority over the west. Duncan of Argyle, indeed, was now a thorough Scottish baron, and had accompanied his sovereign to Ponteland, appearing amongst the number of the Scottish nobles who were present on that occasion at the negotiation of the treaty. But ever since the reduction of Argyle, Alexander had lost no opportunity of advancing his pretensions to the Hebrides, frequently dispatching embassies to Norway to negotiate the cession of the Western Isles, and instructing his envoys to represent to the Norwegian court that the islands in question had been unjustly wrested from his predecessor by Magnus Barefoot. The Scottish view of the case, however, suited ill with the ideas entertained on the same subject by Haco, who replied to the envoys, that the right of the Norwegian kings to their possessions in the western seas had been distinctly recognised, in the days of the same Magnus, by the contemporary king of Scotland. He also added, with considerable truth, that Alexander could have no claim to islands which his predecessors had never possessed, the conquests of Magnus having been gained at the expense of the king of Man, and not at the cost of the king of Scotland. A proposal was subsequently made to purchase the sovereignty from Haco, to which the Norwegian briefly answered that "he was

refer to the entrenched camp or fortification raised by Alexander at Ponteland. The treaty farther confirmed the engagement concluded at York in 1237, and a contract of marriage between the son of Alexander and a daughter of Henry, without prejudice "Regi Scotiæ in maritagiis liberé faciendis."

not in want of money," invariably returning the same concise reply whenever the offer was repeated.*

A. D. 1248. The death of Duncan of Argyle, whose son Ewen performed the usual homage for his Norwegian fiefs in 1248, appears to have suggested to Alexander a different method of proceeding; and acting, it is said, upon the advice of Clement, Bishop of Dunblane, he determined upon extorting the cession from his own subject which he had failed to obtain from Haco. Magnificent were the promises held out to the son of the deceased nobleman if he would consent to hold the Sudreys as fiefs of the Scottish crown; but Ewen, who is described by Paris as a most gallant and accomplished knight, and whose conduct, on another occasion, evinced a consistent loyalty not always met with in the age in which he lived, steadily refused to swerve from his allegiance to Norway. It was in vain that his friends, whose consciences were more easy, counselled him to yield to the wishes of the king, who, annoyed at this unlooked for opposition, openly accused him of traitorous designs. He pleaded the oath which he had already sworn to Haco, assuring Alexander—and he proved it subsequently to be no empty assertion—that he would be found equally faithful to his native sovereign. "No man can serve two masters," was the royal reply—a retort which may be ascribed to the bishop—on which Ewen at once offered to withdraw his homage from Haco, if he was permitted

A. D. 1249. to resign his Norwegian fiefs. Such a course, however, would still have left the islands in the possession of Norway—a contingency not desired by Alexander.

* *Exped. of Haco*, pp. 3, 5. Duncan of Argyle was present at the convention of Newcastle (*Mat. Paris*, p. 437). His son Ewen performed homage to Haco for the Sudreys in 1248 (*Mat. Paris*, p. 516). Duncan, therefore, probably died about the latter date.

Accordingly, he was inexorable; and when the king, who had assembled a considerable fleet in the western seas, prepared to seize upon the Sudreys by force, Ewen, who was willing to resign his fiefs, but neither to retain them at the cost of honour, nor to oppose his sovereign in arms, fled for refuge to the Lewis. No resistance, accordingly, was encountered by the fleet as it sailed amongst the homes of the Western Islesmen, and on arriving off the coast of Lorn, at the opening of July, everything seemed to favour the royal projects. But the hand of death was already upon Alexander, and as he passed Kerrara he was hastily landed upon the little islet. A report soon spread through the host that their sovereign was no more, and, in the minds of the simple population of the district, his death was regarded as a judgment of Providence upon the sole action of his reign, wearing even the semblance of injustice.* 8th July.

Thus died Alexander, in the zenith of a prosperous career, and in the full vigour of manhood, for he had not yet completed his fifty-first year. He was a prince possessing many high and noble qualities, and it is recorded in the pages of one who knew him well, that his wisdom, moderation, and love of impartial justice, gained him the admiration and esteem of his English contemporaries as well as the affection of his own subjects.† By dividing the vast possessions of the Earls of Caithness, by confirming and supporting the native Earls of Ross, and by enforcing the royal authority throughout Argyle, he effectually broke up the dangerous confederation in the north and west that had so frequently menaced the throne of his predecessors, and no outbreak in

* *Mat. Paris* 1249 (p. 516). *Exped. of Haco*, p. 7 to 13. *Chron. Mel.* 1249. *Fordun*, l. 9, c. 63.

† *Mat. Paris*, p. 436.

favour of Mac William, or Mac Heth, signalized the accession of his youthful son. But though in pursuance of his favourite object—the consolidation of his kingdom—he was ready to enforce submission throughout the remotest Highlands, he was equally anxious to preserve peace upon his southern frontier; and though in his early years the influence of Eustace de Vesci drew him into the confederacy against John, after his alliance with Henry he never willingly disturbed the amicable relations of the two countries. Whenever any dispute arose between the kings, Henry was invariably the aggressor; his encroachments upon the liberties of Scotland first drove Alexander to resuscitate his dormant claims; and again gathered the whole force of the kingdom around their prince at Ponteland, in defence of their native land. The bearing of Alexander, on all occasions, affords sufficient evidence that no unworthy fears prompted his desire for peace, a desire that was invariably reciprocated by the majority of the English barons.

The reign of the second Alexander was in many respects an era of prosperity and advance, for his policy was peaceful, not aggressive, and directed principally to the internal amelioration of his kingdom. The laws of David and William relating to agriculture were re-enacted, and directions of more than usual minuteness added; these regulations, apparently, being considered of such importance that they were issued in the very first council held at Scone, on the occasion of Alexander's coronation. It was the special aim of this enactment (to which allusion has been already made) to fix the rural classes in farms on permanent holdings, and convert them into a settled agricultural population, the

"Bondsmen" being ordered to remain in the same *Vills* and localities in which they had passed the preceding year, every one, according as he possessed more or less than *five Cows*—or a pound—in value, being enjoined to take a holding, or to work as a farm labourer.* Advantage was evidently taken of the great assemblage of the Frank-tenantry of the realm at the coronation, to impress upon the proprietary the necessity of enforcing the habits of a settled and agricultural life upon their "native-men," who, if refractory, were to be mulcted of a cow and a sheep, and compelled to work; whilst the usual fine of *eight cows* was to be levied on every lord who failed to carry into effect the royal edict. Two institutions which, though necessary in an unsettled age, were often liable to great abuse—*Gryth*, or sanctuary, and the protection afforded by a lord—were also regulated in the course of this reign; and it was ordered, that the thief who took sanctuary, if he confessed and was shriven, restored the stolen property, paid the king's fine, and swore upon the relics or the gospels never to thieve again, might depart to his home scathless. If he was unable to pay the king's fine he still escaped with life and limb, but he was to leave the country and remain an alien to his native land until he could "make his peace with the king." He who persisted in his innocence, asserting

* *Stat. Alex. II.* 1. *Vide* vol. 1, p. 246 and note. The quarter-holding or *husband-land* was of the yearly value of *one pound*, and this was probably the quantity of land to be taken by the smallest holder, *Vide Appendix D.* In Adamnan's Life of Columba (l. 2, c. 20, *Reeves*), Nesan, who gave the saint a night's shelter near Loch Aber, is described as "plebeius valde inops," with only *five cows*. Did the number mark the smallest householder? Another expression of Adamnan's in this chapter is singular, "Et quia idem Nesanus homo plebeius erat cum uxore et filiis hoc etiam ei vir beatus benedictionis intulit, etc." The "homo plebeius cum uxore" seems to have been distinguished from the *amas*, or military follower, in the days of Adamnan, in the same manner as the married *rusticus* from the *miles* in the days of Beda.

that he fled to sanctuary for his life—a common case, probably, in turbulent times, when the law was often taken into men's own hands—was at once placed under the protection of "the king's peace," on condition that he appeared in court and stood his trial. Any further exemption from the consequences of a crime was, henceforth, evidently regarded as an abuse of the privileges of sanctuary. It seems to have been customary amongst the greater barons occasionally to take a man charged with crime under their protection—into their *soen*—in return for a gift of wax, pepper, cummin, or any other nominal rent; the criminal, in consequence, having a right to be tried in the court of his protector as one of his *men*, or vassals; and if he chose the ordeal, as he probably would, unless the administrator was a bungler, it is most likely that he escaped all punishment for his crime. It is evident that, in this manner, an unscrupulous nobleman might gather around him a body of men, so slightly connected with him on the one hand, that, by refusing the gift, and thus revoking his protection, he could at any moment leave them to utter ruin; but, on the other hand, so closely bound to him on their own part, that he could calculate upon their devotion at all hazards, and for every kind of service. Many of the fearful crimes recorded in the chronicles of the period were probably perpetrated by men of this description, thus bound, body and soul, to the service of their nominal lord. To put a stop to this abuse, it was enacted in a great council held at Stirling in 1230, "on the Sunday before St. Luke's day," that if any lord "stood security" in this manner for a man accused of crime, who was pronounced by the verdict of "the good men of the country" to be neither his liege man nor

his native-man, whether on his land or about his person, that lord should remain "at the king's mercy." It was arranged also, in the same council, that when the clergy, or widows, who could not "do battle" in their own persons, made an accusation of theft, the lord of the fee, or his bailiff, was to fix a day with the sheriff for inquiring into the accusation by "the verdict of the neighbourhood," in royal demesne and king's thanages the sheriff being solely responsible for choosing the jury. The *Visnet*, indeed, is now continually alluded to; none were to be liable to judgment of "pit or gallows" who had once been cleared by its verdict, and all complaints of *Disseisin*, or ejectment from landed property, were to be carried before the same tribunal, which thus stood in the place of the Grand Assize in England. If the neighbourhood decided in favour of the complainant, he was to be at once re-instated by the royal functionary, or the sheriff, and his oppressor was to remain "at the king's mercy;" but if his complaint was pronounced unfounded, he was to pay ten pounds to the king.*

From these and other statutes, it is evident that the accounts of the later chroniclers may be relied upon, when they represent Alexander as devoting much of his time and attention to the regulation and administration of justice. He continued the practice of his predecessors in holding periodical courts in every province, at which, by the laws of William, "all the judges" were bound to attend; and his decisions, according to Fordun, were marked by the same strict impartiality which is said to have formed so distinguished a feature in the character of his

* *Stat. Alex. II.*, 4, 5, 6, 7, 9. The *Statute of Merton*, 20 *Hen. III.*, c. 3, resembles *Stat. Alex. II.* 7.

great ancestor David. It was in one of these courts that William Bisset was tried at Forfar, the king postponing his decision until the great *Moot* held at Edinburgh, which was another of his father's institutions. No rank or station deterred him from upholding the right, and rigidly enforcing the law, and he dismissed Melville and Montealt from one of the highest offices in the land, the justiciaryship, for neglecting to restrain the lawless violence of the Comyns.* Another great official, who dates his appointment from the previous reign, the royal Justiciary for Lothian, was ordered, in a council held about the middle of February in 1244, to make "inquest of misdoers and their resettors"—or harbourers—by the oaths of three or four trustworthy and loyal men, and the bailiff, or steward, in every *Vill* in each sheriffdom throughout the kingdom, Galloway alone excepted. None were to be attached for any crime after this enactment at the sole accusation of a single man, but only after an inquiry of this description; and if a man of knightly rank were accused by such an inquest, he was to be tried by a jury of knights, or frank-tenants holding their property *in fee*. "Property in fee"—or hereditary right—was the invariable mark of freedom, and so thoroughly was the charter at this period the test of freehold rights, that, by a statute passed in the year before Alexander's death, it was enacted that "no oath should be taken touching the life or limb of any man holding land, whether arable or pasturage, except through good and true men, freeholders by charter." Another regulation, confirmed at Scone, about the right of appearing in "the wager of battle" by champion, clearly defines the distinction between the greater barons, or magnates,

* *Wynton*, bk. 7, c. 9, l. 247. *Fordun*, l. 9, c. 61, 63. *Assize Will.* 25, 26.

the lesser barons, or gentry—the "good men and true of the country"—and the great mass of the lower orders. The first-named class is not alluded to, for no question appears to have been raised about their privileges; but it was carefully laid down that a knight, a knight's son, any free tenant by knight's fee, or any one holding his land in any way by hereditary charter, free service, or *fief de hauberc*, and their sons, might, in case of challenge, appear at the bridge of Stirling, and in the royal or other court give battle by their champion. Churl-born tenants at rent—an expression from which it may be gathered that the *tacksman*, or tenant at rent, as was long the case in the Highlands, was not necessarily a man of low-born origin—men of low kin, churls, and all who had neither free tenement nor free stock, were bound to do battle in person; unless their lord chose to entrust their cause to a champion, "for the body of the tenant and his goods are under the protection of his lord."*

The Church shared in the progress of the nation, most of the remaining dioceses being placed upon a similar footing with the sees of Glasgow and St. Andrews; and the ecclesiastical claims, which seem to have hitherto been resisted in many quarters as novel encroachments, were henceforth dutifully acquiesced in, and regarded as the undoubted prerogatives of the clergy.† Argyle was elevated into a separate diocese, and, with the consent of the Earl of Strathearn, Dunblane was placed on the ordinary footing of a regular bishopric by Clement, the prompter of Alexander in his policy towards Ewen of Argyle. Brechin was similarly dealt with, apparently after the failure in the male line of the ancient race of lay

* *Stat. Alex. II.* 8, 14, 15. † *Reg. Glas. Pref.*, p. xxvi.

abbots; and in Dunkeld, Moray, Aberdeen, and Caithness, the chapters were finally established and provided for; though Ross appears as yet to have made little progress towards a similar consummation.* Scotland was rapidly advancing in church and state; but though a disaffected party no longer aimed at supporting a rival candidate for the throne, the spirit which had animated the conduct of the Scottish nobles was displayed under another form, and they now sought to influence that authority which they had formerly been inclined to resist. From this reign may be dated the rise of those two great parties whose contentions long disturbed the peace of the country; and hardly were the ashes of Alexander deposited in their last resting-place at Melrose, before the animosity of the rival factions, kindling over the very grave of their sovereign, carried strife and dissension into the court of his youthful successor.

* *Vide* c. 10, vol. i. pp. 336, 341, notes.

CHAPTER XV.

Alexander the Third—1249–1285.

Within five days of the death of Alexander at Kerrara, the Estates of the Realm were assembled at Scone to place the crown upon the head of his son and successor, a child under eight years of age, when doubts were raised in certain quarters whether the ceremony ought to be allowed to proceed. The day was pronounced to be inauspicious; the king had not yet been knighted; and it was argued that, under such circumstances, a coronation was unprecedented and premature. It was afterwards supposed that these difficulties were suggested by Alan Durward, in the hope that he might be called upon to remove them by creating the king a knight; an honour to which he thought himself entitled to aspire, both from his high station as Justiciary of Scotland, and from his great military reputation as one of the most accomplished knights of the day. But Walter Comyn, Earl of Menteith, one of the most devoted of those personal friends whose attachment the second Alexander had known so well how to secure, with an honourable anxiety to watch over the interests of his deceased master's child, warmly expostulated against the projected postponement. Pointing out the danger of unnecessary delay, he exposed the frivolous character of the objections, arguing, from various precedents, that there was no occasion to knight a king before he assumed the crown, and maintaining that the sovereign

was necessarily the fountain and highest source of knighthood, as well as of all other honours. The earl at length brought all parties to acquiesce in a compromise, and as, upon a former occasion, William Rufus had received the arms of chivalry from the hands of Archbishop Lanfranc, it was now arranged that the Sword of State should be girded upon Alexander by the hands of the Bishop of St. Andrews. The same prelate then read over to the young king the obligations entailed upon his exalted station, translating the Latin formulas into Norman French, the usual language of the Scottish court; and the coronation was brought to an auspicious conclusion within the walls of the abbey church of the ancient capital of Scotland.*

After the completion of the feudal portion of the ceremony, the procession left the sacred building, and the king, clad in his royal robes, and bearing his crown and sceptre, was conducted by his bishops and earls to an ancient stone, long since enclosed beneath St. Edward's chair in the abbey church of Westminster, but then placed by the cross that stood within the precincts of the burial-ground, and to the eastward of the church of Scone. On this rude seat, covered for the occasion with cloth of gold, the nobles placed their childish sovereign, and depositing their robes of state before the Stone of Destiny, bent the knee in homage, and ranged themselves in order at their monarch's feet. Next an aged and venerable bard made his appearance, robed in scarlet, knelt before the occupant of the throne, and with head lowly bowed, recited the royal genealogy in the ancient language of the country, in token that the child of Alexander, son of William, the descendant

* *Fordun*, l. 10, c. 1.

and representative of the line of Alban's kings, ruled over the realm of Scotland by the right of long descent. Thus were the customs of a former age blended with the ceremonies of the feudal era; and in the order and arrangement of Alexander's coronation may be seen the mixed character of the people over whom the youthful sovereign was now called upon to reign.*

The disunion which had thus threatened to mar the auspicious commencement of the new reign is to be attributed to the antagonism of those two great parties whose existence has been already noticed. At the head of the national or Scottish party, which had long been intimately connected with the English barons, was Walter Comyn, Earl of Menteith, the leader of a family which could boast, at that time, of including two earls and upwards of thirty knights amongst its members.† The Comyns were the descendants of Richard, the surviving nephew of David's warlike chancellor, and they may have owed the foundation of their influence, in the country of their adoption, to the union of their ancestor Richard with the heiress of Donald Bane; as they certainly were indebted for their increasing preponderance, like many other families, to their subsequent prosperous marriages. Richard's son, William, became earl of Buchan, in right of his wife the Countess Marjory, beqeathing his title to his eldest son, Alexander; whilst the earl's second son by his first marriage, Walter of Badenoch, acquired the earldom of Menteith by his union with the heiress of that fief. Foremost amongst the opposite party was Alan Durward, an able soldier and a subtle politician, with the Earls of Dunbar and Strathern,

* *Fordun*, l. 10, c. 2. † *Fordun*, l. 10, c. 11.

Bruce Lord of Annandale, the Steward, and other nobles, principally of the south of Scotland; for the northern magnates seem, at this period, to have been generally attached to the national party, whilst the southern earls and barons were inclined to lean towards England; tendencies which may have partly arisen out of their relative position in the kingdom.

Higher motives, however, than mere factious feeling had induced Menteith to insist upon the perils of delay. He was fearful, and with justice, of the undue exercise of English influence; for Henry, who in the previous reign had countenanced the claim of the archbishop of York to officiate at the coronations of the kings of Scotland, would scarcely have overlooked an opportunity so favourable for advancing the pretensions of his crown. As it was,
A. D. 1250. after obtaining in the following year a grant of the tenths of the ecclesiastical revenues of England, Ireland, and the rest of his dominions, to defray the expenses of his projected crusade, he endeavoured to include Scotland within the limits of the papal gift, soliciting a declaration from the court of Rome that Alexander, as the liegeman of England, could not be
A. D. 1251. anointed or crowned without the permission of his feudal superior. But this artfully contrived attempt to advance his own interests, under the pretence of promoting those of the Church, met with the failure that it well deserved; for the pope replied that it was neither the practice of the Holy See to grant such declarations, nor to concede anything derogatory to the royal dignity; whilst he frustrated the attempt of Henry to appropriate the revenues of the Scottish church by stigmatizing his application as an unprecedented request.*

* *Fœd.*, vol. 1, pt. 1, p. 277. It would appear from the accounts of

The unceasing intrigues of the English king against the liberties of their country may have contributed to revive a hostile feeling amongst the Scots, for it is said by one authority, that at one time a rupture was imminent, war only being averted by the intervention of John Maunsel, who was deputed by Henry to negotiate the completion of the marriage already contracted between his daughter and the young king of Scotland.* Christmas was the season appointed for an union that was to cement more firmly the alliance between the two kingdoms: York, the English capital of the north, was the place chosen for the celebration of the ceremony; and nothing was omitted that could enhance the dignity or splendour of the occasion. Henry was present with his queen, and a brilliant retinue of knights and nobles; whilst Scotland sent her chivalry and her clergy to meet the bishops and the barons of England; and Mary de Couci, the queen mother, brought from her native land a gallant array of French nobility to grace the marriage of her son. On Christmas day Alexander was girded with the belt of knighthood by his destined

Hailes, Chalmers, and Tytler, that Henry was actually intriguing at Rome to prevent the coronation of Alexander at the time when it took place. But this is impossible. It is evident that Alexander was crowned immediately on the receipt of the intelligence of his father's death at Kerrara, and before Henry could have known of the event. The answer of the pope to the requisition of the English king is dated 6th April 1251, so that the application must have been made to *set aside* rather than to *prevent* the coronation. The letter of Innocent was evidently, from its tone, intended for a rebuke. The tenths of the ecclesiastical revenues of England, Ireland, and the rest of his dominions, had been granted to Henry for his projected crusade. So determined was Henry to continue his demands upon Scotland, that the crusaders of that country were obliged to obtain a bull, specifying that none of the privileges granted to the English king for appropriating the money paid "for the redemption of vows, etc.," should be turned to their prejudice; from which it may be gathered that Henry endeavoured to extend the papal concession of "three years redemptions, etc.," over Scotland. *Vide Fœd.*, vol. 1, pt. 1, p. 272, 275, 276, 278.

* *Chron. Thom. Wikes in Gale and Fell*, vol. 2, p. 49.

father-in-law, twenty aspirants being admitted into the ranks of chivalry on the same occasion; and on the morrow he received the hand of his childish bride, the Princess Margaret of England. A thousand knights and upwards attended upon the English princess, and the sumptuous silken *cointises* of this gallant train have met with honourable mention in the records of the time. With such a display of English wealth and luxury Alexander could scarcely hope to vie, for Scotland's chivalry on the occasion was barely counted by hundreds.* Unexampled were the festivities that ensued, and the good monk Paris fairly despairs of impressing his readers with any adequate idea "of the abundance and diversity of the banquets, the variety and change of the dresses, the humour of the jesters, or the numbers of the revellers;" though he mentions, as a specimen of the lavish and unbounded profusion, that more than sixty fatted oxen, sent as a present by the archbishop of York, were all used up in the first course alone. Both kings vied in entertaining the entire company alternately; but their hospitality was equalled, if it were not surpassed, by the more than regal magnificence of the ecclesiastical prince of the North, Archbishop Walter Gray, who is said to have expended, in this short period, a sum equal to the whole annual income of the dowager queen of Scotland.†

* "Dressed decently enough," compassionately observes Paris of the Scots. All who are curious in such matters may be interested to learn from the Close Rolls that for this occasion there was provided for the use of Her Majesty of England "one robe of the best coloured violet brocade with *three small leopards* embroidered on the front and back of the dress." In describing the Scottish chivalry, Paris uses the words "Sexaginta et amplius milites et multi militibus æquipollentes." The latter must have been *Thanes*.

† *Mat. Paris* 1251-52, p. 554-55. The queen-mother's dowry was a third of the royal revenue, amounting to rather more than 4000 marks; though

The marriage was arranged to take place at a very early hour, to avoid the pressure of the multitude, and after the completion of the ceremony, Alexander performed the usual homage for the fiefs which he held of the English crown.* Henry then pressed his claim to homage for the kingdom of Scotland, on which Alexander replied, with the high spirit of his father, "that he had come at the request of the English king for a peaceful and an honourable purpose, to celebrate a marriage, and not to give an answer to a question of such importance, about which he had not even had time to consult his council." Henry, feeling perhaps the unworthiness of taking advantage of the youth and inexperience of his childish guest, waived the question for the moment, when the Earl Mareschal put forward a claim to the palfrey of the king of Scotland with all its caparisons, as his perquisite by right of ancient custom. The Scots maintained the illegality of his demand, asserting that their king was at liberty to be knighted by any catholic prince, or indeed by any of his own nobles, and that he had only solicited the honour from the king of England out of affection and respect towards his father-in-law and ally: and as Henry had foregone the more important claim, he forbade the earl to rouse any angry feelings, by continuing to

in the preceding page Paris fixes it at 7000 marks. Macpherson (*Annals of Commerce*, vol. 1, p. 425), prefers the lesser sum for reasons which he states. In this case the yearly income of the king of Scotland must have amounted to rather more than 12,000 marks, a sum about equal to the revenue of the Bishop of St. Andrews. The wealth of the dignified clergy may be appreciated from the amount of the sum spent by the Archbishop, equal in the present day, according to Lord Lyttleton's calculation, to £40,000.

* Paris adds *Lothian* to the fiefs for which Alexander tendered his homage. Had this been really the case, the Earl of Dunbar and other southern barons would have been summoned to follow their English suzerain to the wars; whilst Lothian would have been amongst the fiefs made over to the Scottish king after the performance of homage. *Vide Appendix L*, pt. ii.

assert a privilege founded, of course, upon the supposed vassalage of Alexander.*

A. D. 1252. Before the departure of the royal guests from York a serious charge was brought against the principal Scottish officers of state. Henry asserted that he had received reliable information of a design on the part of Alan Durward, to obtain from the pope the legitimation of his wife, Marjory, a natural daughter of the late king, so that in case of any disaster befalling the youthful Alexander, Alan's daughters would be the heiresses of the Scottish crown; whilst Robert, the chancellor, was accused of conniving at the plot, having agreed to use the great seal for the purpose of furthering the ambitious projects of the justiciary. Many who conceived themselves suspected of a share in the conspiracy secretly escaped from York, the chancellor amongst the number, who relinquished the custody of the great seal, which was immediately broken to pieces in the presence of the Scottish nobles, and shortly afterwards resigned his abbacy of Dunfermlyn. Others merely retired from the situations which they had hitherto held, and Alexander, who acted throughout under the advice of Henry, contented himself with bestowing the vacant offices upon the leaders of the opposite party, two of whom, Menteith and his brother-in-law, William, Earl of Mar, are said to have been Alan Durward's accusers. Alexander, on the completion of the new arrangements, returned to Scotland with his young queen, and as both he and Margaret were children under eleven years of age, Henry appointed Matilda de Cantilupe to the

* *Mat. Paris*, p. 555. The reply of Alexander had probably been prepared beforehand, for, to the demand of the Mareschal, which was scarcely expected, *the Scots*, not their young king, returned an answer.

guardianship of the childish bride, engaging, at the same time, to send a trusty counsellor to assist the boy king in the arduous task of governing his dominions.*

The promised confidant quickly made his appearance in the person of Geoffry de Langley, who had rendered himself too hateful in the office of keeper of the royal forests to remain any longer in England. He had already played the part of a spy upon the predecessor whom he had supplanted in his office, and it may have been intended that he should enact a similar character at the court of Alexander; but his career in his novel capacity was equally ephemeral, as the Scottish nobles soon dispensed with the presence of a man whose character rendered him too odious to be endured, even by his own countrymen.† During the next three years the attention of Henry was much too fully occupied by the troubled state of Gascony, as well as by his projected conquest of Sicily, to allow of his interference in the affairs of the neighbouring kingdom, though he found an opportunity of obtaining from the new pope a grant of the tenth of the revenues of the Scottish Church; for the A.D. 1254.
application of an ally, who promised to render valuable assistance in the struggle against the Emperor Frederic, was a matter for serious consideration, and

* *Chron. Mel.* 1252. *Fordun*, l. 10, c. 4. *Mat. Paris* 1252, p. 506. Alan Durward married Marjory, a natural daughter of the late king, and, through his daughter Ermengarde, his grandson Nicolas de Soulis subsequently claimed the crown (*Fœd.*, vol. 1, pt. 2, p. 775). It may be gathered from a singular bull issued about this time, that Durward and his friends were accused of having removed the councillors of Alexander the Second from about the person of his son (*Reg. Morav.*, No. 260). Henry's own words prove that he was the instigator of Durward's removal; and he subsequently pledged himself to found no precedent injurious to the liberties of Alexander, or his kingdom, upon his conduct on that occasion; in other words, he disclaimed having acted as *feudal guardian* exercising his rights over a vassal during his minority (*Fœd.*, vol. 1, pt. 1, p. 327).

† *Mat. Paris* 1252, p. 571.

no longer to be dismissed as "an unprecedented request."* He derived considerable assistance in his French campaigns from the eminent military abilities of Alan Durward, and gradually the ex-justiciary rose to be high in his favour and confidence.† Ever prone to be led by others, Henry listened eagerly to the insinuations of that astute nobleman, who quickly roused his anger against the regents of Scotland, whilst his irritation was further increased against Durward's rivals by the tidings constantly arriving from the north. Bitter complaints were forwarded by the young queen of her constrained incarceration in Edinburgh Castle, which she described as "a dismal and solitary fortress exposed to the unhealthy air from off the sea," immured in which she was forbidden to change her residence, deprived of her proper attendants, and even denied the society of her own husband.‡ It is easy to detect in these fancied grievances the exaggeration of an angry child, accustomed to the greater luxury of the English court, and weary of the constraint which the regents, in their fear lest their rivals should obtain possession of the royal children, thought it necessary to enforce. Unfortunately, however, Reginald of Bath, a physician who had been sent to her daughter by the queen of England, and who appears to have taken a prominent part against the noblemen who were then in power, sickened and died, protesting his belief with his

* *Fœd.*, vol. I, pt. I, p. 303, 322, 348-49. It was Innocent IV. who refused and Alexander IV. who granted the application. The Scottish clergy required a severe admonition from the latter Pope before they obeyed his mandates. Henry forwarded a document to Alexander pledging himself to found no injurious precedent on these papal grants. *Fœd.*, p. 336.

† *Chron. Mel.* 1253.

‡ Salubri aere et virore, *ut juxta mare*, penitus destituto, are the words of Paris. The *husband* was thirteen years of age!

latest breath that he had been "inhumanly poisoned by those unworthy Scots." Henry, therefore, was naturally disposed to look with disfavour upon the regents he had himself appointed, whilst everything tended to increase the irritation of his feelings and advance the projects of the Durward.*

Whilst Henry was still in Gascony he dispatched Simon de Montfort on a secret mission to Scotland, and the results of his embassy became apparent in the following year.† About the beginning of August A. D. 1255. Alan Durward, who had by this time returned to Scotland, made his appearance at a council held in Edinburgh, at which an ominous gathering of the regents' enemies mustered around him; but his language was specious and pacific, his only wish was to obtain a settlement of the grievances distracting his native land, and as his rivals could hardly refuse so moderate a request, they agreed to meet at Stirling upon an early day, and discuss the best method of arriving at a peaceful arrangement. Thoroughly thrown off their guard, the regents dispersed to complete their preparations for bringing up their partizans to the appointed council at Stirling. About the same time two horsemen rode up to the gate of Edinburgh Castle, representing themselves as simple knights, followers of the banner of Robert de Ros, one of the royal council, and they were admitted without suspicion within the walls of the fortress. They made their way at once to the queen, who hailed them with delight as the Earl of Gloucester and John Maunsel, Provost of Beverley, her father's most intimate and confidential adviser. More of the supposed retainers of De Ros continued to arrive, in small parties, until they mustered in numbers

* *Mat. Paris* 1255, p. 609-10. † *Fœd.*, vol. 1, pt. 1, p. 306.

enough to overawe the garrison, when the gates were thrown open to Durward and Dunbar, who drove out their opponents, manned the castle with their own people, and at once assumed the direction of the king and queen.* Missives were dispatched in haste to summon the remainder of the confederates to Edinburgh, and intelligence of the triumphant commencement of the undertaking was promptly forwarded to England, with an urgent request for the immediate presence of Henry to ensure its successful completion. The Scottish regents, baffled and deceived by the craft of their adversaries, lost no time in endeavouring to rectify their mistake, but it was now too late; their opponents defied them to attack a castle containing the sacred person of their king; Henry, who had summoned the military tenants of his crown, was fast approaching the Borders; and Menteith and his supporters were forced to submit, as they dared not attempt any open resistance against the overwhelming power of their antagonists.†

The king of England and his queen reached Werk Castle upon the borders, belonging to Robert de Ros, about the beginning of September, and after

* *Chron. Mel.* 1255. *Fordun*, l. 10, c. 9. *Mat. Paris*, p. 610. I have combined the accounts of the English and Scottish writers, each, as usual, assigning the most conspicuous place to his own countrymen. Paris is probably correct in his account of the surprise, as the garrison would hardly have given admittance to Earl Patrick or the Durward, though they might easily have mistaken Gloucester and his people for the *English* retainers of Robert de Ros coming to the assistance of their lord. Once within the castle, Dunbar and his friends would take the lead. In their descriptions of the occurrences of this period, the chronicler of Melrose and Fordun may be taken as the advocates of the two different parties; the former expressing the general feeling of the Scots of his days, whilst the latter is the apologist of Durward's party.

† On the 10th of August Gloucester and Maunsel were dispatched from Cawood, a residence of the Archbishop near York. By the 16th Henry had learnt that he could "carry out his purpose," and he immediately issued summonses from York to the military tenants of his kingdom. *Fœd.*, vol. 1, pt. 1, p. 325-26.

frequent interviews with the successful party, who had removed their royal charge for greater security to Roxburgh, Henry crossed the frontiers, and was conducted with much pomp and ceremony by Alexander and the confederate nobles to a conference, held in Kelso church, at which a complete change was carried out in the constitution of the Scottish regency.* Alexander bound himself to remove the former regents from his councils, engaging neither to restore them to his confidence, nor to employ them in his service—except in the contingency of foreign invasion—until they had made reparation for all their misdeeds. He promised to accept, as the guardians of his kingdom for the next seven years, the Bishops of Dunkeld and Aberdeen, with the Earl of Dunbar, and twelve other earls and barons recommended by the king of England; to be guided entirely by their directions; to treat his queen with becoming affection and respect; and to fulfil all the obligations and reasonable concessions which had been agreed upon between Henry and his present advisers. The Earl of Dunbar then swore upon the soul of his master that he would abide truly by this convention, whilst Henry, on his side, declared that no article in the agreement should be allowed to derogate from the liberties of Scotland, promising that the whole treaty should be held as null and void after the expiration of the term of seven years, in other words, when Alexander should attain the age of twenty-one.† Gamelin, the bishop elect of St.

* *Chron. Mel. Fœd.*, vol. 1, pt. 1, pp. 327-28. Henry was at Werk from the 5th to the 20th of September, and on the latter day he signed the agreement at Sproriston, to which Alexander affixed his signature at Roxburgh. Kelso lies between these places.

† *Fœd.*, p. 329. The original regents were the Bishops of St. Andrews, Glasgow, and Dunblane, the Earls of Menteith, Buchan, and Mar, John de Balliol, Robert de Ros, Aymer de Maxwell and Mary his wife, John Comyn, Nicolas de Soulis, Thomas de

Andrews, Alexander Comyn, Earl of Buchan, and William, Earl of Mar, were then deprived of the respective offices of chancellor, justiciary, and chamberlain, which were conferred upon the Bishop of Dunkeld, Alan Durward, and David Lindsay; whilst John Balliol and Robert de Ros, two of the late regents, who, as vassals of Henry for their English fiefs, were more immediately exposed to his vengeance, were condemned to forfeiture as traitors, the decree being rigidly carried into effect against Robert de Ros; though Balliol, whose father had rendered important services to John, was soon enabled from his great wealth to repurchase the royal favour, from that time transferring his support to the party countenanced by Henry.*

Thus did Alan Durward achieve his return to Scotland. An instrument, in which Henry binds himself to defend and protect the new regents, and, if necessary, to support them to the utmost extent of his power, both then and thereafter, not only against their opponents but even against their own sovereign,

Normanville, Alexander Vinet, John de Dundemor, David de Graham, John le Blund, Thomas Fitz Randolph, Hugh and William Gourlay, William Wishart, Archdeacon of St. Andrews; Brother Richard, Almoner of the Temple; David de Lochore, John Wishart, William de Canerhon, and William "formerly the king's chaplain." In their place were substituted, the Bishops of Dunkeld and Aberdeen, the Earls of Dunbar, Fife, Strathearn, and Carrick, Alexander Stewart, Robert de Bruce, Alan Durward, Walter de Moray, David de Lindsay, William de Brechin, Robert de Manners, Gilbert de Hay, and Hugh Giffard. Of the former Regents, the Bishops of St. Andrews and Glasgow alone were present at this conference, relying probably on their sacred character.

* *Fordun*, l. 10, c. 9. *Mat. Paris*, p. 611. Balliol and de Ros are sometimes erroneously represented to have been sole regents; but the letter in the Fœdera proves that such was not the case. They were the only members of the obnoxious regency upon whom Henry could wreck his vengeance, as they held their principal fiefs of that king. His conduct towards those noblemen displays the part which he would have acted towards the rest also, if they had been his vassals, and his inability to punish them is another indirect proof of the independence of Scotland.

affords a most convincing proof of the extent to which they were indebted to the English king for the complete success of their project.* They were upheld by his power alone, and by the circumstance of possessing the person of the king, for the feeling of the whole nation appears to have been against them, and the Bishops of St. Andrews and Glasgow, with the Earl of Menteith and many other noblemen, incurred the vehement displeasure of Henry for openly refusing to affix their seals to a document which they stigmatized as infamous.† The successful party undoubtedly regained their ascendancy by a daring and unscrupulous conspiracy, and by a dangerous alliance with a prince who had seldom missed an opportunity of advancing the pretensions of his crown; but it is only justice to add, that in all their proceedings they appear to have evinced a jealous care in guarding against the encroachments of their ally, and in preventing the establishment of any precedent which might militate at a future period against the liberties of Scotland.

At the very outset Gloucester and Maunsel bore the written promise of Henry that he would make no attempt to secure the person of Alexander, engaging in the same document neither to deprive him of his rightful inheritance, nor to annul his marriage with the English princess.‡ A fortnight later, when the English king reached Newcastle, and a cry

* *Fœd.*, vol. 1, pt. 1, p. 329.

† *Chron. Mel.* Wynton, bk. 7, c. 10, l. 139, describes this *ordynans* as most displeasing to the "thre Statis, Burgens, Barownys, and Prelatis."

‡ In other words, that he would not act as feudal guardian of a ward whom he might disinherit. The title which Henry assumed of "principal counsellor to the illustrious king of Scotland" (*Rot. Pat. ad an.* 39 *Hen. III.*, *quoted by Tytler*), was taken perhaps to allay any jealousy about *the title* by which he interfered in the affairs of Scotland. He thus claimed authority over the new regency without "founding any injurious precedent."

arose that the liberties of Scotland were in danger, he again gave a specific declaration that no unjust claim should be founded upon his former acts at York, when he originally changed the counsellors of Alexander; binding himself, at the same time, to take no further steps before the arrival of the Scottish king. He subsequently added a further pledge, never to detain his youthful son-in-law within the bounds of England for a longer period than was consistent with the interests of his crown and people; whilst the clause allowing Alexander to summon the disgraced noblemen to his assistance, in case of foreign invasion, must have been expressly inserted with the view of allaying all fears about the intentions of England on that score.* Little doubt can exist about the general aim of Henry's policy towards Scotland. His attempt to entrap Alexander at York reveals the designs against the kingdom of his childish relative which he and his counsellors never ceased to cherish; just as his behaviour towards Balliol and De Ros displays his exasperation against the Scottish regents, disclosing the manner in which he would have dealt with the whole body, had they all been equally in his power, as their overlord. The precautions against the encroachments of England can scarcely be regarded as the spontaneous propositions of Henry, and the former regents held aloof during the entire duration of the conference. They must be ascribed to the successful party, who may so far be allowed the credit of having carefully watched over the interests of their king and country, after they had first unscrupulously secured their own.

No sooner were the new regents firmly established than they summoned their predecessors to render an

* *Fœd.*, vol. 1, pt. 1, pp. 326, 327, 329.

account of their proceedings; and, as their rivals resolutely refused to acknowledge their authority, discord reigned throughout the realm of Scotland. Foremost amongst the objects of persecution to the party now in power was Gamelin, the bishop elect of St. Andrews, whom they had already deprived of the chancellorship, to which office he had been appointed on the resignation of the abbot of Dunfermlyn. After the death of David de Bernham, the same bishop who had placed the crown upon the head of Alexander, it had been signified to the chapter of St. Andrews by the late regents that Gamelin was a fit successor; but the chapter, who appear to have been in the interest of the opposite party, preferring Robert, dean of Dunkeld, Rome was appealed to; and Abel, the archdeacon of St. Andrews, who was commissioned to lay the case before the pope, had the address to secure the prize for himself. The intruding bishop filled the see for a very short time, and Gamelin, upon the death of Abel, was elected without further opposition; but as he had not been consecrated at the time of his dismissal from the regency, his enemies declared his election void. Rome was again appealed to, both parties resorting to the usual method of influencing the papal court; but on this occasion Gamelin was successful, and he was consecrated upon Christmas day by his late colleague, the bishop of Glasgow; adroitly managing to shift the burden of the expenses in which he had become involved, through his appeal to Rome, upon certain Scottish monasteries, which subsequently incurred the penalty of excommunication for their backwardness in satisfying the demands of the pope.* The

* *Fordun*, l. 10, c. 8, 9, 10. He describes the failure of the envoys quaintly enough, "post varias altercationes coram Papa ventilatas et *bursas evacuatas*."

bishop, however, gained little by his success, for the regents threatened to mulct him of a large sum before he was permitted to enter upon his diocese; and upon his refusal to yield to any such exaction, they banished him, without further parley, from the realm, confiscating the revenues of his bishopric. He left the country accordingly, and, as he was forbidden to pass through England, he again betook himself to Rome; where, in spite of the efforts of his persevering opponents, his cause was warmly espoused by the pope, who wrote to the king of England, enjoining him to interfere in behalf of the banished prelate, and to reinstate him in his see, though Henry appears to have paid no attention to the letter.*

Whilst Gamelin was upon his way to Italy to lay his grievances before the head of the Roman Church, Alexander and his queen passed some time in England, as welcome and honoured guests, at the court of Henry. The visit was one of ceremony, Alexander travelling with three hundred horses, and with a retinue so numerous, that as lodgings could seldom be found for them, the greater part were obliged to be accommodated in tents; and after he joined the English court at Woodstock, where one of the great festivals of the Roman Church was celebrated with much pomp and state, both kings proceeded to London by different roads, lest the number of their attendants, if they travelled along the same route, should create a scarcity throughout the adjoining country. The young Prince Edward was deputed to receive them upon their approach to the English capital; the city celebrated their arrival with rejoicings and festivities; and John Maunsel, who craved

* *Chron. Mel.* 1255-56. *Fœd.*, vol. 1, pt. 1, p. 352. This letter was written on the 16th of December 1256. Henry did not issue his orders to arrest Gamelin until the 22d of January 1258.

permission to entertain so goodly a company at his own mansion of Tothill, eclipsed all competitors by one of those displays of sumptuous and magnificent hospitality in which the dignified churchmen of that age appear to have been unrivalled. Henry, upon this occasion, made over to his youthful son-in-law, who was still only fifteen years of age, the *seizin-in-chief* of the Honor of Huntingdon, of which the English king, as *suzerain* of the fief, had hitherto enjoyed the wardship, endeavouring in every way to impress upon him the advantages of the English alliance. But Alexander, on returning to his native land, found the same state of anarchy prevailing; and his hospitable entertainer, Maúnsel, was deputed to accompany the young king to Scotland, with authority to raise the whole military force of the north of England, to assist him, if necessary, in controlling the refractory party.*

For nearly a year after Alexander's visit to England, Scotland remained exposed to all the miseries A. D. 1257. of a condition almost bordering upon civil war; though attempts appear to have been made, from time to time, at an arrangement, and for some such purpose, perhaps, the queen mother, with her husband, John de Brienne, once more made her appearance at the court of her son. Fearful lest her influence should be exerted in the cause of the late regents, Henry had made her promise, before passing through England, that she would make no attempt against the council of his appointment; for he always appears to have been distrustful of Mary de Couci, in spite of the professions of esteem which abound in his letters to the dowager queen of Scotland.†

* *Fœd.*, vol. 1, pt. 1, p. 347. *Mat. Paris* 1256, p. 626. As usual, the historian revels in his description of the banquet at Tothill, exclaiming "never churchman gave such a dinner!" High praise indeed.

† *Fœd.*, vol. 1, pt. 1, pp. 352, 357, 358, 362.

The pope, in the meantime, had not been unmindful of the cause of the exiled Bishop of St. Andrews; and as his appeal to the king of England had met with no success, he transmitted full powers to the Bishop of Dunblane and the Abbots of Melrose and Jedburgh, to fulminate an excommunication against the regents if they persisted in their conduct towards Gamelin. A general sentence against Durward and his coadjutors was at first published at Stirling, and repeated, as a warning, "with bell, book, and candle," in every church and chapel in the kingdom. But as the regents paid no attention to this empty threat, they were, in due course of time, treated as contumacious offenders, and excommunicated by name, in the abbey church of Cambuskenneth. The opportunity was far too favourable to be neglected by the leaders of the opposite party, and at once setting aside all thought of compromise, Menteith determined upon securing the person of the king. Accordingly, upon the night of the 28th of October, the chamber in which Alexander lay asleep, at Kinross, was suddenly invaded, the great seal was forced from the custody of the Dean of Dunkeld, who held it as the vice-chancellor of his bishop, and before dawn the king was safe within the walls of Stirling Castle, surrounded by his former guardians.* Menteith justified his conduct

* *Chron. Mel.* 1257. *Fordun*, l. 10, c. 10. A compromise between the two parties had almost been brought about at this time, and the 29th of August had been actually appointed for a meeting at Stirling to settle the differences between Alexander and his former guardians (*Fœd.*, vol. 1, pt. 1, pp. 353, 362). This compromise could hardly have been set on foot with *excommunicated traitors;* so that it is probable that the papal deputies appeared at this very council to publish their first warning, and that during the short time that elapsed before they resorted to extremes, the national party changed their tactics and planned their *coup d'etat*, in order that it might follow immediately after the ceremony in the abbey church of Cambuskenneth.

by maintaining that he had not overstepped the duty of a loyal subject in rescuing the person of his sovereign from the hands of excommunicated traitors, who, if they had been permitted to proceed in their nefarious career, would have brought an interdict upon the entire kingdom. He blamed the king for receding from the promise of his early youth, and for pursuing a line of conduct most injurious to the interests of his kingdom, by promoting aliens and foreigners in preference to his own native subjects; whilst he openly charged Queen Margaret with an undue leaning towards the interests of her father, whom she had stimulated to bring a hostile army against her husband's country, thus causing irreparable mischief, and entailing utter ruin upon Robert de Ros, the most eminent baron of the North.*

Complete success resulted from this bold measure of Menteith. Durward, the master-spirit of the English party, fled to Henry, and the rest of the regents dispersed in various directions.† In the

* *Mat. Paris* 1257, p. 644. Lord Hailes (*Annals*, vol. 1, p. 187) reads the words of Paris as if the ruin of De Ros was imputable to the Comyns for his subsequent espousal of the Queen's cause. But the historian evidently alludes to the loss of De Ros's great English fiefs, forfeited by Henry. De Ros had no opportunity of becoming a partizan of the queen of Scotland, for he was thrown into prison, and even his life was in danger. The English barons were indignant at his treatment, and a singular scene took place between Henry and his Earl Mareschal, which reveals how little the great feudal magnates were animated on certain occasions with that ceremonious respect which grew by degrees "to hedge around the person of a king." Henry heaped abuse upon Bigod for his advocacy of De Ros, openly charging him with treason. *Thou liest*, retorted the enraged earl! What would have been the effect of such an answer upon a Tudor, a Hapsburg, or the Grand Monarque!

† The Earl of Strathearn was not amongst the refugees, for he wrote to Henry, in the following May, to acknowledge the receipt of a letter from that king, and to pledge himself to carry out its instructions, which were, to remain by the person of the queen of Scotland, and to see that she was not removed to any place that was distasteful to her. (*Fœd.*, vol. 1, pt. 1, p. 371). It is likely from this request on the part of Henry, that the health of his daughter had really suffered from her previous confinement in Edinburgh Castle.

A. D. 1258. course of the winter Menteith brought the king to Roxburgh, to enforce the submission of the opposite party; but the latter obtained a further respite, by engaging to present themselves on a stated day at Forfar, there to make due atonement for their offences. Their appointment proved a mere evasion, for the majority of the barons who had been connected with the foreign alliance escaped across the frontiers, and sought the protection of the English court, where they reminded Henry of his promise of support; whilst the Comyns and their partizans lost no time in entering into a defensive alliance with the Welsh; and a treaty was mutually ratified by which each party engaged not to march against the other, the Scots binding themselves, on their part, to use their best endeavours to induce their king to confirm the agreement.*

Henry appears to have been inclined to limit his assistance to the orders already issued for the apprehension of all suspected persons arriving in England, whether from Scotland or the continent; for his parliament was refractory and had refused supplies; the Welsh were in open revolt and had beaten his armies; the Scots were pressing for the payment of the dowry of Alexander's queen; and the English barons, always favourably inclined towards the party now dominant in Scotland, were as averse as ever to war. Autumn therefore arrived before John Maunsel was associated with Simon de Montfort and Peter of Savoy, and dispatched on an embassy to the north, by which time Menteith and his supporters were fully prepared. Accordingly, when the Earls of Hereford

* *Chron. Mel.* 1258. *Fœd.*, vol. 1, pt. 1, p. 370. This treaty contains some curious arrangements for the mercantile intercourse between the Scots and Welsh.

and Albemarle, with John Balliol, presented themselves at Melrose to solicit an audience of Alexander, the following day was at once named for a conference with the English envoys at Jedburgh, that place being chosen from its vicinity to Jedwood forest, in which the Scottish leaders could assemble their followers with equal secrecy and rapidity; for they were aware of the arrival of a considerable force, under Maunsel and the refugees, at Norham, and they regarded the proposal of an interview with the king as a mere artifice to obtain possession of his person.*

The conference was duly opened at Jedburgh at the appointed time, but three weeks elapsed before it was brought to a conclusion. Delay was in favour of the Scots, for every day brought a fresh accession to their strength, and as rank after rank of spearmen, issuing from the glades of the forest, took up their position around the place of meeting, the hopes of the English envoys died away, and they relinquished all idea of resorting to their original intention. Menteith and his friends were now in a situation to dictate their own terms, but it was neither their object to provoke a war with England, nor to perpetuate the discords of their native land; and wisely preferring to render their triumph permanent by using it with moderation, they were willing to conciliate their opponents by admitting them to a fair share in the government. Accordingly, a council was appointed to assist Alexander, in which four of the leaders of either party were associated with the queen mother and her husband; Henry signified his approval of the arrangement, promising his favour and support as long as justice was rightly administered,

* *Chron. Mel.* 1258. *Mat. Paris*, p. 649. *Fœd.*, vol. 1, pt. 1, pp. 369, 377.

and providing all matters of which he might have reason to complain were rectified within three months; and from the period of this compromise between the hostile regents the dissensions, which had so long distracted the minority of Alexander, faded gradually away and ceased to agitate Scotland.*

It is very difficult to arrive at any satisfactory conclusion about the events of a period so remote, and after the lapse of six centuries it is all but impossible to pronounce, with certainty, whether Durward was really guilty of the plot which was originally laid to his charge. Even the contemporary writer in the Melrose Chronicle speaks vaguely and doubtfully on this point; and he was no partizan of the justiciary.† Pope Innocent, however, made it an accusation against the party of which Durward was the leader, that they had removed the counsellors of the late king from about the person of his youthful son, a statement which is confirmed by the chartularies; for it is amongst the national party that we must look for the Bishop of Glasgow, so long the chancellor of the second Alexander; for the Bishop of Dunblane, his confidential friend and adviser; and for John Balliol, whose relative and namesake, Henry, had latterly held the office of chamberlain.‡ In the very year, also, in which the king of England deprived

* *Chron. Mel. Fœd.*, vol. 1, pt. 1, p. 378. The new council consisted of John de Brienne and the queen mother, the Bishop of St. Andrews, and the Earls of Menteith, Buchan, and Mar, with Alexander Stewart, Alan Durward, Robert de Manners, and Gilbert de Hay. The real power, however, remained in the hands of the Comyns, for they and their friends monopolized the great offices of state. Even the justiciaryship of Lothian, which had generally been held by a *southern* baron, and latterly by David de Lindsay, was now given to Hugh de Berkeley, a *northern* baron, and one of the leaders of the national party (*Lib. de Scone*, No. 108). Berkeley appears to have been succeeded by William de Soulis, a name also connected with the same party.

† *Chron. Mel.* 1251.

‡ *Reg. Morav.*, No. 260.

Durward and his friends of the offices which they then filled, on the occasion of the removal of the bones of the canonized Margaret into the choir of the abbey church of Dunfermlyn, a mysterious vision of *Seven Earls* flits for a moment across the page of history; reappears in the same shadowy manner when Bruce, Lord of Annandale, one of Durward's foremost supporters, brings forward his claim upon the crown; and then vanishes for five hundred years and upwards, until it is seen once more to rise and glimmer in the nineteenth century as the *ignis fatuus* of the historian of Scotland.* These are suspicious circumstances, and in connection with the subsequent conduct of Durward and his partizans, they render it difficult to exonerate the justiciary from the accusations brought against him by his enemies; especially as he appears to have been of a character to make any sacrifice of principle to retain the government in his own hands, or to promote the advancement of his dangerous and unscrupulous ambition.

* Compare *Reg. Dunf.*, No. 348, with Palgrave's *Documents, etc.*, No. iv. and v. *Vide Appendix S.* There is a curious passage in the Lanercost Chronicle which throws a light upon the customs of the age, as well as upon the character of Durward. The Scottish farmers, according to the chronicler, were tenants at will, holding their lands by agreements renewed from year to year, the farms often being let to the highest bidder. On one of his rent-days Durward informed a tenant that he had received an offer of higher rent for the land which the farmer held, giving him the option of paying the increased rent or of quitting his farm. The tenant chose the first alternative, if his lord would ensure him against a further rise in the rent. "My right hand on it," answered Durward, and the bargain was concluded "according to the custom of the country." Each year witnessed a repetition of the same scene; again the rent was raised, again the right hand was pledged, and again the promise was broken; until at length the farmer, when his lord once more offered his right hand upon the bargain, exclaimed, before the whole company present, "the left hand this time, my lord; the right has so often deceived me." The laugh was turned against Durward, who "in modest confusion"—the chronicler's own expression—hastily dismissed the farmer with a promise to keep his faith for the future. (*Chron. Lan.* 1268.)

Henry's conduct in these transactions has been variously estimated, and he has been represented either as a fond father-in-law, actuated by the purest motives of affection, or as a crafty tyrant, aiming only at his own selfish aggrandizement. The personal character of the English king affords the best clue to this apparent anomaly. Weak rather than wicked, his affections were evidently warm and kindly—though, like his passions, as transitory as they were vehement—and as he too often fixed them upon unworthy objects, most of his public actions may be ascribed to the influence of the favourites who succeeded for the time in obtaining his confidence. Whilst his counsels were directed by Hubert de Burgh, no attempt was made against the liberties of the kingdom, of which the Countess of Kent was the next heiress after a childless king. With the return of Peter des Roches revived the policy of encroachment;—in the hands of Walter Bisset, Henry became the tool of private revenge: Alan Durward made him the instrument of selfish ambition. Unlike his great son, Edward, who, when he had once seriously advanced his pretensions against Scotland, relinquished them only with his life, Henry raised or abandoned his claims with equal fickleness and facility, according to the promptings of his own passions, or the suggestions of his favourites. Rage was the feeling that latterly hurried him to the north; anger against the party of whose ill treatment his daughter had complained; and it was this passionate desire of vengeance that enabled the crafty Durward to mould the king to his own purposes, rather than any deeply laid scheme on the part of Henry to advance his pretensions at the time to the superiority over Scotland; pretensions indeed that seemed of secondary

importance for the moment, though at no time were they entirely laid aside.

The month of November had commenced before the negotiations connected with the establishment of the new regency were brought to a conclusion, and ere the close of the same month the leading man in Scotland had ceased to exist. The news was brought to Henry, at St. Albans, that a stumbling charger had at length released him from the ablest and most consistent opponent of his policy amongst the Scottish regents; for Menteith had been crushed by the fall of his horse, and the aged earl never recovered from the shock.* His countess remarried almost immediately, and as the object of her choice was John Russell, an Englishman, the Scottish nobles, indignant at her selection of a foreigner, gave countenance to a dark tale accusing her of poisoning her former husband; and a younger brother of the steward, Walter Balloch, who had married a younger sister of the countess, advanced his claim to the earldom with success. The elder countess, deprived of her estates, and banished from the kingdom with her husband, Russell, appealed at once to the court of Rome; and after the lapse of a quarter of a century the question was at length decided by a compromise. Half the earldom was made over to Stewart, who assumed the title of Earl of Menteith, and the remainder was erected into a barony for a son of John the Red Comyn, William, who had claimed the whole fief in right of his wife, a daughter of the elder countess by her first husband, the great Earl Walter.†

* *Chron. Mel.* 1258. *Mat. Paris* 1258, p. 660. The news reached Henry at St. Albans on the 22d of November.

† *Fordun*, l. 10, c. 11, 14, 33, 37. Neither Paris nor the Melrose Chronicle allude to this story. I have followed

Although at the time of Menteith's death Henry was under the control of the barons who had procured the dismissal of his foreign favourites, the intelligence appears to have inspired him with a hope
A. D. 1259. of regaining his influence in the councils of Scotland, and he lost no time in dispatching William Horton, a monk of the monastery of St. Albans, upon an embassy to the Scottish regents.* Horton was charged with the conduct of a secret negotiation, and with letters addressed to Alexander and his principal nobility; and though the object of his mission has never transpired, it appears to have occasioned great and general dissatisfaction amongst the assembled barons of Scotland. The English envoy read letters from his master, requesting the attendance of Alexander and his queen at the English court, to treat of certain important matters, of which the purport was not to be divulged. To this proposal the Scots demurred, on the grounds that it was a hazardous step on the part of their king to leave his own dominions; and Horton was obliged to rest contented

the version of Fordun, upon which Boece and Buchanan have improved by accusing the countess of an intrigue with Russell. As Walter Comyn witnessed a charter dated in February 1231, as Earl of Menteith (*Lib. Balmerino*, No. 1), he must have been married for nearly thirty years, and if Tytler is correct in his conjecture that Russell was the English baron who was present at the marriage of Alexander II. in 1220, the lovers must have been an elderly pair. The whole tale wears a very suspicious appearance, for if Fordun may be credited, who first alludes to the story, the whisper of slander would never have been raised, or at least it would have been carefully hushed up, if the countess had listened to the addresses of one of the Scottish nobles. It looks as if the virtuous indignation of the Durward party had been excited by the hope of obtaining the earldom of Menteith for one of their own partizans, "*freckled*" Walter Stewart. The other side were little inclined to raise a contest in behalf of the Englishman Russell, and postponed their efforts until the claims of the countess were inherited by her daughter, the wife of William Comyn. *Vide Hailes' Annals*, vol. 1, p. 189, for a lengthened account of the whole story.

* Henry heard of Menteith's death "circa festum St. Katerinæ," and Horton was dispatched to Scotland "circa festum Katerinæ." Menteith's death was evidently the cause of Horton's mission.

with the promise of a letter, in which the king and his nobles were to agree in general terms to meet the wishes of Henry, upon the receipt of a certain guarantee which had been offered by the English king. The Earl of Buchan, Alan Durward, and the Chancellor, William Wishart, were the bearers of this document, to which the seals of the Scottish king and of his nobles were appended; but neither Alexander nor his queen visited England, and the earl and his colleagues returned to Scotland without permitting the object of their mission to transpire.*

* *Mat. Paris* 1259, p. 663. *Mat. West.* 1259, p. 365-66. The secret mission of Horton was probably connected with a desire on the part of Henry, who was at that time under the control of his barons, to set on foot an offensive and defensive alliance with Alexander against their "mutual enemies"—in other words, their own barons. One of the objects of the visit of the king of Scotland to London in the following year was to treat of "virile auxilium à rege et terræ magnatibus, contra inimicos suos sicut eis (ei?) quondam promisit cum majoribus Scotiæ per Scriptum suum signatum et per fratrem Gulielmum de Horton procuratum et transmissum." This *Scriptum* evidently refers to that mentioned in the passage of Paris. "Facientes enim illi literas suas patentes communiter sigillatas tam sigillo Regis quam omnium magnatum Scotiæ, ad Regem Angliæ et totam communitatem libenter annuerunt se voluntatem eorum facturos, dummodo se facerent Rex Angliæ et magnates de *scripto* suo, sibi prius fideliter promisso, securos." *Aid* therefore, and probably *mutual* aid, was the purport of Henry's letter; and perhaps the mission of Horton was the original cause of the presence of a body of Scots at the battle of Evesham. It may be gathered from the letter of Pope Boniface VIII. to Edward I., that Henry sent patent letters to Scotland, distinctly specifying that he would receive such aid as a *special favour*, not as a *feudal duty*, from the Scottish king (*Fœd.*, vol. 1, pt. 2, p. 907). Some such acknowledgment may have been promised by Henry—the *scriptum promissum*—and brought back by Buchan and his companions. The secrecy, as I understand Paris, was towards the *English* rather than the *Scottish* Parliament, as Tytler infers; nor can I agree with that historian in ascribing the stipulations made on the occasion of Alexander's visit to England in September 1260, to the mission of Horton, who returned from Scotland about the 1st of March 1209. The dates in the Fœdera (p. 402) are opposed to this view, whilst Paris and Westminster both represent the whole negotiation connected with Horton's mission to have been terminated by the embassy of Buchan and his companions. The documents connected with this secret treaty between Henry and Alexander have shared the fate of the secret agreements between John and William. The latter were mutually restored in 1237, and must have then been destroyed; but no trace remains of the letters brought by Horton, or of those alluded to by Boniface, except they

A. D. 1260. In the autumn of the following year, Alexander and his queen repaired to the English court, as the young king was anxious to exercise his rights over his Honor of Huntingdon, and to obtain the payment of the remainder of Margaret's dowry, as well as to prosecute his claims upon certain lands between the rivers Tyne and East Vent, and to remind Henry of the promises in the letters which had been brought by William Horton.* The Scottish king, on his progress towards the south, was received with the usual state, whilst his queen followed by easier journeys—for an heir to the throne was expected—and when she reached St. Albans, the Bishop of Galloway, who had been her conductor thus far, resigned her to the charge of her younger brother, Edmund. Her arrival in London was the signal for the accustomed display of sumptuous hospitality, and the whole surrounding country groaned under the burden of supplying the royal festivities on a scale of unwonted magnificence. On the return of Alexander to the north, he left his queen at the English court, but so jealous were the Scots of the intentions of her father, who had already bound himself to avoid all recurrence to the affairs of Scotland during the residence of Alexander at his court, that before they permitted their queen to relieve the natural anxiety of her parents by remaining in England, another pledge was exacted from Henry to take no undue advantage of her situation; and he swore on his soul, that in case of the deaths of the father and mother, the infant heir should be

may have been referred to in the letter "which we did not see, because William de Dumfries said that he wished first to shew its tenor to the king (Edward)" — (*Robertson's Index*, p. xxi.)

* *Mat. West.* 1260, p. 376. The lands between the Tyne and East Vent, a river of Cumberland, consisted of a tract of country on the borders of the counties of Northumberland, Cumberland, and Westmoreland.

at once made over to the custody of the Scottish nobles. The young queen was then allowed to pass the winter at Windsor, where, in the following February, she gave birth to a daughter, who received her own name of Margaret, and subsequently became the wife of Eric, king of Norway.* A. D. 1261.

Alexander, as he approached manhood, appears to have been desirous of carrying out the policy of his father, and of annexing the western islands to the dominions of the Scottish crown. He endeavoured to attain this end by negotiation, and as soon as he was of age, and released from the control of the regents, he dispatched an embassy to Norway, consisting of a knight of the name of Missel—perhaps an error for *Frisel*, an ancient form of the name of Fraser—and an archdeacon, who were present at the coronation of Prince Magnus, and were highly edified at some of the ceremonies upon that occasion; Missel exclaiming, "They told me there were no knights created in this northern land, but never saw I knight dubbed with greater solemnity." For some cause Haco detained the envoys, though, upon the intervention of the English king, they were released A. D. 1262. from durance and permitted to return to their country, Haco assuring Henry that he entertained no hostile intentions against Scotland. He appears, however, to have been incensed at the continual attacks of the Earl of Ross, and other mainland barons, upon Skye and the northern Hebrides; for

* *Fœd.*, vol. 1, pt. 1, p. 402. *Mat. West.* 1260, 1, p. 377. Alluding to the payment of the Scottish king's expenses during his stay at the English court, Westminster observes "licet hoc fuerit pluries quasi de jure petitum, nunquam tamen fuit, per plurium assertionem, nisi de liberalitate exhibitum." Such is a specimen of Westminster's accuracy respecting points in dispute between the two crowns. The payment in question was guaranteed by a clause of one of Richard's charters, *Fœd.*, p. 62, and is frequently alluded to elsewhere, *e.g.*, *Rot. Claus.*, p. 86, 90.

the western chieftains, unable to resist the aggressions of their powerful opponents, forwarded repeated complaints to the sovereign to whom they looked for redress, insinuating, and probably with truth, that Alexander was secretly favourable to their assailants. Haco, therefore, in spite of the pacific language in which he had replied to Henry's letter, was determined upon an expedition to the Western Isles, and warning the retainers of the Norwegian crown to be ready with their respective contingents, he passed the whole of the ensuing winter and spring in making vast preparations for the impending war.*

A. D. 1263. Midsummer passed away before the fleet of Haco was ready for departure. Much time had been consumed in preparations, and as Hersirs, Lendermen, and Bonders, flocked with their followers to the rendezvous at Bergen, exaggerated rumours of the magnitude of the expedition penetrated to England, alarming the guardians of her northern coasts, and arousing their fears of invasion. It was said that so magnificent an array had never before been assembled in the fathomless Fiords of the North. The king's ship, built expressly for the voyage, mounted seven-and-twenty banks of oars, and was of oak throughout, glittering with gilded dragons, and crowded with the flower of Norwegian chivalry. Many of the other vessels were large and well appointed, and it must have long been remembered as a gay and brilliant

10th July. scene, when, glittering in the rays of a July sun, the mightiest armament that ever left the shores of Nor-

* *Exp. Haco*, p. x., 15, 17, 19. *Fœd.*, vol. 1, pt. 1, p. 422. The intervention of Henry may have been in consequence of the secret treaty. Amongst the assistants of the Earl of Ross in attacking the Islesmen was a certain Makamal, supposed to have been a Campbell. If the conjecture is correct, it would be the earliest mention of that name. Their old burial-place was at Kilmun, in Cowal, which seems to have been the earliest seat of the senior branch of the race.

way quitted the haven of Herlover, to vindicate her ancient rights amongst the islands of the western seas.*

Propelled by a favourable wind, the ships of the Norwegian monarch reached, in two days, the nearest of the Shetland Isles, where a fortnight passed away before they sailed for the Orkneys. It had been the wish of Haco to detach a separate squadron to the Firth of Dornoch, whilst he retained the largest ships in the harbour of Elwick, opposite to Kirkwall. But as many of the Bonders were reluctant to be parted from their king, he gave up his project and continued his course towards the Hebrides. As the fleet lay in the harbour of Rónaldsvoe, the Norse historian of the expedition relates how a dark shadow spread over the surface of the sun, nothing remaining visible to the eyes of the astonished Norwegians but a narrow 5th Aug. ring of gold; and thus, unconsciously, he affords incontestible evidence that he was a witness of the annular eclipse of the sun, which happened upon the 5th of August in that year. In the course of Haco's progress towards the south, the various chieftains owning the superiority of Norway met him upon his approach to their territories, to render the service due to their fiefs. Earl Magnus, of the Orkneys, had accompanied him from Bergen; the king of Man, another Magnus, met him upon his northern boundaries, between Skye and the Lewis; and off Kerrara, so fatal to the second Alexander, Dugal Mac Roderic, the leading magnate of the Isles, brought the lesser Sudreyan lords to welcome their Norwegian suzerain, and to swell the numbers of his armament.†

* *Exp. Haco*, p. 25 to p. 31. *Fœd.*, vol. 1, pt. 1, p. 429.
† *Exp. Haco*, p. 33 to p. 47.

More than a hundred vessels were now collected off the island of Kerrara, and fifty sail were dispatched under Magnus of Man, Dugal of the Isles, and the other Sudreyan leaders, to lay waste the lands of Cantyre, whilst a squadron of five ships was deemed amply sufficient to overcome opposition in Bute. With the remainder of his fleet Haco made sail for the little island of Gigha, where he was met by Ewen of Argyle, who came off in a galley with Thorgils, Bishop of Stavangro, a guarantee apparently for his safe return from the interview. Haco pressed the Lord of Argyle to follow the banner of Norway, but Ewen refused to swerve from his allegiance to Alexander, offering, as on a similar occasion fourteen years before, to resign the fiefs for which his sense of loyalty forbade him to perform the required service against his native sovereign. Long did Haco retain the leading chieftain of the west in the hope of overcoming his resolution, for he knew full well the value of his alliance, but when he found that his determination remained unshaken, he dismissed him honourably, and with many marks of favour; the chivalrous nobleman leaving the fleet of Haco on friendly terms, but without compromising his loyalty, and promising to use his best endeavours to bring about an arrangement with Alexander. Twice in situations of difficulty and danger had the Lord of Argyle proved his steadfast adherence to the path of good faith and honour, and in an age in which the obligations of an oath were but too often lightly esteemed, no brighter example can be found of truthful and unswerving fidelity to his plighted word.*

Haco was still at Gigha, where he had listened

* *Exp. Haco*, p. 49, 51.

to the prayer of the Abbot of Saddel, who craved a protection for his monastery, when Dugal of the Isles arrived from Cantyre with overtures from Murchard and Angus, the lords of the invaded district. Immediate submission, and the renunciation of their Scottish allegiance, were the terms offered by the king, with one day to consider his proposal. Murchard yielded at once, but Angus hesitated to comply. He was the Lord of Isla as well as of part of Cantyre, and as a cousin of Dugal—for he was the son of Donald Mac Reginald—and the head of the youngest branch of the family of Argyle and the Isles, he was a chieftain of considerable importance. Seven years before the expedition of Haco he had been forced by the regents to acknowledge that he held his fiefs of the Scottish crown. In vain had he attempted to find a refuge in Ireland; Henry proclaimed every man a rebel who dared to shelter the fugitive—for the party of Durward was in the ascendant: Angus was fain to submit, and the barons of Argyle were bound, on pain of forfeiture, to hold by the royal cause if ever the Lord of Isla presumed to falter in his allegiance.* His situation, however, was now reversed, for already the burning hamlets of Cantyre proclaimed the arrival of the Norwegians, to punish that defection which their earlier presence might have prevented; and in this dilemma, despairing of assistance from Scotland, Angus yielded to the arguments of Dugal and resigned his possessions into the hands of Haco. His submission was promptly accepted; a fine of a thousand head of

* *Fœd.*, vol. 1, pt. 1, p. 336. *Robertson's Index*, p. xi., xxii. It may be gathered from the *Excerpta ex Rot. temp. Alex. III.*, p. 9, 14, that Alexander held two of the children of Angus and Murchard as hostages for the fidelity of those chieftains. Angus was the ancestor of the great clan of *MacDonald* in all its numerous branches.

cattle was levied upon the Lords of Isla and Cantyre, their fiefs were restored to be held of the crown of Norway, and letters were immediately dispatched to countermand all hostilities against their territories.*

The havoc arrested in Cantyre was carried on in other quarters with unabated rigour. A reinforcement of small vessels was added to the squadron already detached against Bute, and foremost amongst the assailants was an islesman of the name of Roderic, or Rory, who claimed that island as his rightful inheritance. A descendant, apparently, of one of the earlier lords of Bute, he had been outlawed by the second Alexander for his continual attempts to regain, by force, the land which he looked upon as his birthright; and revenge now stimulating his activity, he massacred nine of the garrison of Rothsay Castle in cold blood, after they had capitulated to the Norwegians; and whilst Haco, rounding the Mull of Cantyre, was sailing up the Firth of Clyde to turn the capture of Bute to advantage, the implacable Roderic carried fire and sword upon the mainland, glutting his desire for vengeance in the blood of the unoffending inhabitants.†

For several days Haco remained at anchor off Arran, and whilst he was in the neighbourhood of that island a number of friars came off, from time to time, who were commissioned on the part of the king of Scotland to propose a truce preparatory to further negotiations; and as it was not the object of the king of Norway to engage in a lengthened contest, but only to vindicate his claim to the sovereignty of

* *Exp. Haco*, p. 55.

† *Exp. Haco*, p. 59, 63. This Roderic, or Rory, could hardly have been the father of Dugal and Alan, as he is sometimes supposed to have been; or surely *they* would have shared in his forfeiture, and *he* would have assumed the title of king of the Isles instead of his son Dugal.

the Hebrides, he willingly agreed to the proposal, deputing an embassy to arrange the terms with Alexander. The envoys were received with studied courtesy, and treated with every mark of respect. They claimed the Hebrides as the undoubted inheritance of their sovereign, and as Alexander only stipulated for the retention of Bute, Arran, and the Cumbraes, there appeared to be every prospect of a speedy and satisfactory arrangement. Still, as time wore away, the Scots appeared to avoid committing themselves to any final agreement: another embassy was dispatched to the mainland, but the result was always the same, and the Norwegians grew uneasy as they remarked the increasing numbers of the Scots upon the neighbouring coasts. Their provisions also were beginning to fail, and they urged their king to break off the truce, and supply his fleet by a summary foray; but Haco decided to make yet another attempt to come to terms, and he instructed one of his immediate attendants, of the name of Kolbein, to carry his final proposals to the Scottish court. The message of the Norwegian king was highly characteristic, and recalls the ancient practice of his forefathers. He challenged the Scottish king to meet him with his whole army at a conference, there to arrange the terms of peace; "and if God willed there should be peace, it were well; but if not, then let both armies join battle, and leave the issue in His hands." Kolbein found Alexander equally ready to fight or negotiate, but he was still met by the same procrastination, and upon his return to the fleet without a satisfactory answer, Haco, dismissing all further thoughts of peace, proclaimed the truce to be at an end.*

* *Exp. Haco*, p. 69 to p. 75. The Norse account plainly states that the

The leading chieftains of the isles were immediately dispatched with sixty galleys to devastate the coasts of Scotland. Sailing between the rugged shores of Loch Long, when they reached the head of the lake they dragged their boats across from Arrochar to Tarbet, launching them again upon the bosom of the beautiful Loch Lomond. Its "hundred isles," filled with the crowds who vainly thought themselves secure from the ravages of the spoiler, were wasted with fire and sword; and Alan Mac Roderic, sweeping across the fertile sheriffdom of Stirling, returned with the plunder of its inhabitants, whilst his colleagues were harrying the Lennox. Such was the last gleam of success that shone upon the banner of Norway, and at length, when it was too late, Haco learnt to appreciate full well the true cause of the dilatory policy of Alexander.*

Upon the evening of Monday the 1st of October a violent tempest arose; ten vessels foundered in Loch Long, five were driven ashore upon the coast of Ayrshire, whilst many more were disabled by the increasing force of the wind. The royal ship dragged her anchors, and for some time was in imminent danger; for, a transport driving against her during the storm, it required eight anchors to keep her fast at her moorings, and Haco, betaking himself to the longboat, rowed to the Cumbraes to order the im-

unwillingness of the Scots to come to any terms arose from their desire to procrastinate, "because summer was drawing to a close and the weather was becoming bad." It was their object to detain Haco on the coast, so that they appeared willing to take a very moderate tone at first, and as the Norwegian king would have gladly accepted their terms, he was led to prolong his stay until the season was too far advanced.

* *Exp. Haco*, p. 77. The names of the chieftains detached to harry Scotland were Magnus of Man, Dugal and Alan of the Isles, sons of Roderic, Angus MacDonald of Isla and Murchard of Kintyre. They were chosen probably from the lightness of their galleys as well as to test their fidelity.

mediate celebration of a mass; for he shared in the superstitious fears of his followers, who attributed the tempest to magic, and deemed its horrors the work of Satan, whilst the Scots ascribed them to St. Margaret.* As ship after ship drifted past in distress, the blaze of the beacons, which had long been in readiness upon the Ayrshire coast, signalled far and wide to the expectant Scots that the time for action had arrived; and the peasantry, flocking to the beach, plundered the transport that had been driven ashore, and attacked the shipwrecked crews with a shower of missiles. But they met with a stubborn resistance, for the hardy Northmen, sheltered behind their stranded vessels, weré thus enabled to make a stout defence until the arrival of reinforcements from the fleet, on which the Scots retired with their plunder; and as the wind abated towards the morning, the king rowed in from the Cumbraes, with a strong force, to bring off the remainder of his men from the shore.

The approach of dawn revealed a numerous body of Scots drawn up in the neighbourhood of the village of Largs. About fifteen hundred were horsemen, many of whom were mounted on Spanish chargers, sheathed in complete armour; a gallant troop, brilliant in appearance, and formidable in the shock of battle, but of little real use in a hand to hand struggle on the sea beach. The infantry, who were destined to bear the brunt of the conflict, were merely the peasantry of the neighbouring districts, hastily brought together by the blaze of the beacon fires, and mostly armed with spears or bows, the whole force being under the command of the Steward of Scotland, though the Norse chronicler has erroneously

* Compare *Exp. Haco*, p. 85, 87, with *Fordun*, l. 10, c. 15.

supposed that Alexander was present in person.* The Norwegians, all tried and well armed soldiers, mustered about nine hundred men upon the beach, whilst, upon a rising ground in advance, two hundred more were posted under a leader of the name of Ogmund, evidently for the purpose of covering the intended embarkation.

The Scottish skirmishers were already pressing upon the advanced detachment on the rising ground, when the Norwegians, with difficulty, prevailed upon Haco to retire to the Cumbraes; for they were anxious to remove the king from the dangers of their exposed position. The courage of Ogmund's men began to fail as the line of horsemen approached the hill; small and scattered parties stealing off towards the shore, until Andrew Nicolson, who appears to have assumed the command, directed Ogmund to retire in good order upon the main body on the beach. No movement is more trying than a retreat in the face of a superior force; and when, in obedience to their orders, the advance faced about to the rear, each man endeavoured to outstrip his neighbour, till the retreat, which had begun in tolerable order, soon became too rapid, at length degenerating into a headlong flight. A panic seized the main body as the fugitives hurried over the brow, and, wheeling round in the utmost confusion, they rushed precipitately towards the sea, swamping many of their boats in the surf in their desperate endeavours to push off from the land. The Norwegians were now driven along the shore in great disorder, and with heavy loss, until Andrew Nicolson, Ogmund, and a few other leaders, separating themselves with difficulty from the flying mass, succeeded in rallying the

* *Fordun*, l. 10, c. 16.

main body, which they formed in a circle to resist the onset of the Scots. The contest was again renewed, when, at this crisis, an incident occurred that revived the drooping courage of the Norwegians, and saved them, apparently, from destruction.

Conspicuous amongst the pursuers was a knight of the name of Sir Piers Currie, whose gilded and glittering armour, with the jewels gleaming on his embroidered belt, flashed upon the eager eyes of the Norwegians as he rode down their line with incautious gallantry;* for he alone had left the serried band of horsemen that won the hill, and galloping amongst the combatants on the beach, animated the courage of the Scottish infantry by his bold and reckless bearing. As he rode carelessly along the ranks of the foe, Andrew Nicolson, stepping out from the circle, with one blow aimed at the thigh, shore through bone and armour, and buried his sword in the saddle. Currie fell a corpse to the ground, his glittering belt becoming the prize of the enemy; and whilst the struggle was renewed with all its fierceness around the body of the fallen knight, two gallant Norwegians, Ronald and Olave, taking advantage of a temporary lull, attempted to land their followers through a tremendous surf; and though Ronald was beaten back from the shore, Olave succeeded in bringing up his reinforcements to the assistance of his exhausted countrymen. The death of Currie, and the arrival of Olave, restored the fortune of the day; the Norwegians reformed their broken line; the Scots contented themselves with occupying the rising ground in force, and as evening approached, the contest dwindled into a

* *Wynton*, bk. 7, c. 10, l. 196. One Norse MSS. calls him *Ferus*; another, more correctly, *Peter*.

succession of petty skirmishes; when suddenly the Norsemen, advancing their whole force, swept the Scottish infantry from their position on the hill, and, under cover of this desperate and unexpected charge, drew off the shattered remnants of their army to their boats, and gained their ships before the gale again increased to a tempest.*

Such was the conclusion of the skirmish at Largs, for a battle it can hardly be called. Only one man of note fell upon the side of the Scots, and he lost his life through his own reckless daring, for the sea beach was no fit spot for a mounted knight in armour. Seven Norwegians of distinction were slain, and their general loss may probably be estimated in proportion; for, as the Scots were enabled to carry off all their dead without molestation, either their victory must have been far more complete than the Norsemen chose to admit, or their loss must have been comparatively trivial. As the action was undecisive, so were its results unimportant; for it would be erroneous to ascribe the consequences of the general failure of the expedition to the repulse of a few hundred shipwrecked Norwegians by the half-armed peasantry of the neighbourhood.

Within a few days of his disasters at Largs, Haco was rejoined by the detached squadron from Loch Long, and, after setting fire to his stranded vessels,

* *Exp. Haco*, p. 89 to p. 107. *Wynton*, bk. 7, c. 10, l. 196. *Fordun*, l. 10, c. 16. *Chron. Mel.* 1263. The latter authority rightly attributes the repulse of Haco "per pedissequos patriæ" to the tempest. The chronicler devotes a far shorter paragraph to a description of the battle than to a lament over the deposition of good Abbot Matthew, "who gave us pittance cakes on Fridays in Lent." The Norse account of the conflict is very diffuse; but readers of the Sagas must always bear in mind that the Northmen invariably encounter far superior numbers, and inflict much greater loss than they sustain. The Sagas, however, are not singular in this respect, and with due allowance for a natural partiality for their own side, they are generally very fair and accurate.

he weighed anchor and sailed down the Firth of Clyde. It was his wish to retrieve his losses by availing himself of a requisition from Ireland, to invade that country and assist in its liberation from the English yoke; but so strongly were his followers opposed to this project, that he was obliged, most reluctantly, to relinquish it, and rounding the Mull of Cantyre, he retraced his course through the Western Isles, each petty kinglet taking his leave as the royal fleet swept past his island home. Off Kerrara the king dispatched a message to Ewen of Argyle, but with no satisfactory result; and he bestowed the fiefs which that nobleman held of the Norwegian crown upon Dugal of the Isles and his brother Alan, when he parted from them off the island of Mull. The weather was still unsettled, one ship foundering in the Pentland Firth, and the progress of the Norwegians was slow, whilst, as they sailed along the Scottish coasts, they were attacked by the country-people whenever they attempted to land. It was November, therefore, before the fleet arrived at the Orkneys, and the increasing gales deciding Haco to pass the winter amongst those islands, he dismissed the bulk of his armament, retaining only twenty vessels, whose crews he quartered upon the islanders. But mortification, anxiety, and want of rest had done their work, and a mortal sickness seized upon the aged king, who had now filled the throne of Norway for the lengthened period of fifty-six years. Occasionally he rallied, arranging the affairs of his kingdom during the intervals of his disorder, and declaring Prince Magnus to be his only son and successor. To soothe the sleepless moments of the dying monarch, the lives of the saints and the chronicles of the kings of Norway

were read by the side of his couch; but of all the accounts of the exploits of his predecessors, he best loved to listen to the deeds of his own grandfather, Sverre, the great leader of the Birkbeiner. At length he became speechless, and on the 15th of December (to use the simple language of the Norse writer), "At midnight Almighty God called King Haco out of this mortal life." For three months the body lay in the church of St. Magnus at Kirkwall; and as the winter passed away the sorrowing nobles bore the royal corse to Norway, where, in obedience to the latest wishes of the dying king, his remains were deposited, amidst the ashes of his predecessors, in the cathedral church at Bergen.*

* *Exp. Haco*, p. 107, *et seq.*

CHAPTER XVI.

Alexander the Third—1249–1285.

The intelligence of Haco's death, which is said to have reached the king of Scotland on the very day of the birth of his eldest son, Alexander, relieved him from all further anxiety about the vicinity or the intentions of his rival; and, before many months elapsed, he had thoroughly re-established the influence of the Scottish crown throughout the islands of the west. The task of reducing the Hebrides was assigned to Alan Durward and the Earls of Buchan and Mar, and the islesmen were doomed to endure a repetition of the sufferings they had inflicted, in the previous year, upon the sheriffdom of Stirling and the Lennox. The chieftains were executed, expelled, or pardoned, according to the degrees of their supposed culpability, and many who had been mulcted of their cattle by Haco for their reluctance to join his fleet, were again fined by the royal lieutenants for having yielded in their extremity to the summons of the Norwegian. Nor was it the intention of Alexander that the king of Man should escape without punishment for his active participation in the expedition up Loch Long, and an army was collected upon the coasts of Galloway to enforce the submission of that island prince.* A. D. 1264.

The little kingdom of the Isles had been rapidly

* *Fordun*, l. 10, c. 18.

sinking into insignificance ever since the possession of the Sudreys by Somarled, and his descendants had interposed a rival power between the Nordreys and the Isle of Man; whilst its kinglets yielding, like the rest of the western chieftains, to the pressure of the moment, shifted their allegiance as the occasion required, and tendered it alternately to the English and Norwegian kings, and sometimes even to the pope. Godfrey Olaveson, who had repaid the hospitality of his protector, Inge, by deserting him at the battle of Opslo, returned from Norway upon the death of Somarled, and the auxiliary fleet with which he hoped to win back his patrimony may have been
A. D. 1164. the price of his well-timed treachery.* He found his illegitimate brother, Ronald, in possession of the kingdom, but he easily unseated his rival, and after an ephemeral reign of four days Ronald was blinded and deposed. For three and twenty years after his return Godfrey filled the throne of Man, bequeathing it on his death to his son Olave, who was indebted to Cardinal Vivian for his claim to be the lawful heir of his father. The cardinal, during his mission as legate, about ten years previously, had so worked upon the conscience of Godfrey, as to induce him to complete the ceremony of marriage with Fingola, a daughter of the Irish Mac Loughlin; and thus the mother of Olave became the married wife, instead of the *handfasted* bride, of the island prince her husband;† but as their son was still in his childhood at the time

* *Heimsk. Saga* xv., c. 17.

† This kind of union was not uncommon in the west, and may account for the frequent divorces amongst the Scots, Irish, and Islemen, and for the pretensions so often put forward by claimants who were stigmatized as illegitimate. The issue of a *handfast* marriage were considered legitimate, even though the connection were dissolved and a fresh union formed. Ronald was probably the son of a marriage of this description, and as such he would have been looked upon by the Manx and Islesmen as the rightful heir of his father.

of his father's death, the Manxmen chose his elder brother, Ronald, for their king.*

The new sovereign owed his election to his martial qualities, for he was one of the last to retain the habits of the ancient rovers of the sea, and is said to have passed three years of his life without ever sleeping "beneath a sooty rafter." His connection with John de Courcy, who had married his sister, Afreca, involved him in the contest between that nobleman and De Lacy, and in his endeavour to assist his brother-in-law to recover the earldom of Ulster, they both met with a signal defeat at Strangford Lough. Ronald assigned the Lewis as an appanage to his brother, and when Olave murmured at the hardship of living in a thinly peopled island where no corn would grow, regarding his complaint as a symptom of disaffection, he seized and delivered him into the keeping of William the Lion, of whom, about this time, Ronald seems to have held a portion of Caithness. Olave accordingly exchanged the tedium of his mountain home for a stricter confinement within the walls of Roxburgh Castle, until a general release of captives, upon the accession of Alexander, once more set him at liberty. Seven years' experience of a Scottish prison appears to have reconciled him to the monotony of his original appanage; for, upon his return from a pilgrimage to the shrine of St. James of Compostella, he effected a reconciliation with his brother, and, marrying a younger sister of the queen of Man, resigned himself to encounter, with his bride, the privations of his former residence.†

A. D. 1187.

A. D. 1205.

A. D. 1214.

Some time after his return to the Lewis, Olave

* *Chron. Man* 1164, 1176, 1187.

† *Hoveden* 1196. *Flatey Book in Col. de Reb. Alb.*, p. 351. *Chron. Man* 1204, 1205, 1207, 1216.

was gratified by a visit from his sister's son Reginald, the new Bishop of the Isles, but the nephew, a strict disciplinarian, refused to hold any communication with an uncle who had married within the forbidden degrees of relationship; and Olave, entering into the views of his nephew with suspicious alacrity, quickly disentangled himself from the unholy tie, and solicited the hand of Christina, a daughter of Ferquhard, Earl of Ross. Ronald's queen vowed vengeance for the affront thus offered to her sister, and dispatched secret instructions to her son Godfrey Don, then residing in his appanage of Skye,
A. D. 1223. bidding him avenge the insult in the blood of his uncle; but Olave, warned of his danger in time, was able to escape to his new ally, Earl Ferquhard, and Godfrey was obliged to rest contented with relentlessly harrying the Lewis. Olave was soon joined on the mainland by Paul Balkason, the leading chieftain of Skye, who had also been obliged to fly to the Earl of Ross on account of his refusal to join in the attack upon the Lewis; and the fugitives, who quickly came to an understanding, returned to Skye, where they ascertained that Godfrey, with a scanty retinue, was absent at Iona, and setting out at once, with five galleys, they surprised and seized upon their enemy, whose eyes were ruthlessly torn out at the instigation of the vindictive Lord of Skye. It was now too late to recede, and as all the chieftains of the Nordreys espoused his cause, Olave sailed to Man with two and thirty galleys, and obtained the
A. D. 1224. cession of the northern Hebrides, whilst Ronald, who was in no condition to dispute his brother's demands, was obliged to be satisfied with retaining the sovereignty of Man.*

* *Chron. Man* 1214, 1223-24.

The elder king was not of a disposition to submit A. D. 1225.
with patience to his loss, and enlisting the assistance of the Lord of Galloway, he set out in the following year to wrest the Nordreys from his brother; but his expedition proved a failure, as the Manxmen refused to fight against the Islesmen. Still persisting in his project of reconquering the Nordreys, he gave his daughter in marriage to Alan's son Thomas—the same Thomas who was subsequently the cause of the disturbances in Galloway—crossing over to the mainland, nominally for the purpose of repairing to the English court, though in reality to arrange a fresh expedition with his new ally. The Manxmen, however, smarting under an enforced contribution of a hundred marks, and indignant at the idea of an alliance with Galloway, a connection which always seems to have been unpopular amongst the descendants of the Gall-Gael, at once transferred their allegiance to Olave, and about three years afterwards Ronald lost his life in a vain attempt to recover his ascendancy in Man. He fell in a A. D. 1229.
battle at Tingwall, and though Olave professed much regret at the loss of his brother, it was remarked at the time, as a suspicious circumstance, that no active measures were taken to avenge his death.*

Olave immediately repaired to Norway to obtain the confirmation of his title to the whole kingdom of the Isles, but Haco had already conferred the Sudreys upon Ospac; though, upon the death of the latter, in Bute, Olave, who shared in the expedition which has been already described, again obtained the whole of his dominions, which, after a reign of eleven years, he bequeathed to his son Harald. During the A. D. 1237.
absence of the young king amongst the islands he

* *Chron. Man* 1225-29.

left his kinsman, Lachlan, in charge of Man, but the regent appears to have been suspected of a secret leaning towards another son of Olave, his own foster child Godfrey; for upon the return of Harald he fled with his young favourite, and endeavoured to escape to Wales. The ship in which they were embarked was driven, in a violent storm, upon a rocky coast, and Lachlan, plunging into the waves,
A. D. 1238. had already gained the shore, when he heard the voice of Godfrey calling for assistance. Without a thought about himself, he forced his way back to the sinking ship, caught his foster child in his arms, and turned once more to encounter the raging surf; but his foot slipped, he fell from the deck into the vessel's hold, and neither rose again to the surface, their bodies being found, when the storm subsided, locked in each other's arms. Such instances of unselfish devotion were not of rare occurrence in that rude age, and they form a pleasing contrast to the harsher and more repulsive features of the period.*

A. D. 1239. As Harald refused to acknowledge his dependance upon Norway, Gospatric and Gilchrist Mac Erchar, whose names appear to mark them as members of the Clan Lagman, or Lamond family, in Cowal, whose Gaelic name was Mac Erchar, obtained
A. D. 1242. a grant of the kingdom from Haco; and two years elapsed before Harald, carrying his submission to the court of the offended king, was reinstated in his ancestral dominions. He cultivated the alliance of the kings of England and Scotland, and his reconciliation with Haco was so complete, that he was invited to Norway, treated with every mark of favour, and received the hand of the princess Cecilia,

* *Chron. Man* 1237-38.

his royal father-in-law promising to raise his island kingdom to an unexampled height of power and prosperity. But Harald was never destined to reap the full advantage of his new connection, for the ship in which he embarked with his bride, on his return to his own country, foundered off the Shetland Isles, A. D. 1148. and all on board were lost.*

Ronald Olaveson succeeded his brother Harald, but after filling the throne for the short space of three weeks, he was assassinated by Ivar, a partizan of the opposite faction, and Harald, the son of Godfrey Don, reigned in his place. Harald was A. D. 1249. soon summoned to Norway, to account for the crime which placed him on the throne; and, about two years later, the remaining brother, Magnus Olaveson, who had married the daughter of Ewen of Argyle, A. D. 1252. arrived at Man, and was immediately acknowledged by the Manxmen as their king.†

Magnus Olaveson was the prince whose exploits, in the service of the Norwegian Haco, now drew A. D. 1264. upon him the wrath of the Scottish king; but as the force assembling in Galloway was far too powerful to be resisted with any hope of success, he anticipated the purpose of his foe, hastened to Dumfries, where the Scottish army was preparing for embarkation, and threw himself upon the mercy of Alexander, consenting to hold his kingdom as a dependency of the Scottish crown, and guaranteeing to furnish ten galleys towards the royal fleet, on the stipulation that his new feudal lord should protect him from the vengeance of his former superior. Magnus died in A. D. 1265. the following year, and the Manx appear to have shaken off the authority of Alexander for a short

* *Chron. Man* 1238-39, 1242, 1247, 1248.

† *Chron. Man* 1249. *Fordun*, l. 10, c. 24.

time, as, in the year 1268 he collected an army in Galloway with the intention of again reducing the islanders, though the continued prevalence of tem-
A. D. 1268. pestuous weather prevented the projected invasion. At length, about seven years later, he completed the reduction of the island, routing Ivar, who seems to have been his principal opponent, with the loss of
A. D. 1275. upwards of fifteen hundred men, and placing the whole country under the management of his *Maors*, or Bailiffs. The chief of these officers bore the name of Godfrey Macmara, and it is highly probable that he represented the Gaelic element opposed to Ivar and the Gall-Gael, and was a lineal descendant of the same Macmara who led the southern Manxmen in their desperate contest with Jarl Ottir and the northerns at Sandwirth, in the days of Magnus Barefoot.*

The ease with which he had been able to enforce the submission of the Hebrides, and the Isle of Man, encouraged Alexander to re-open the negotiations
A. D. 1265. for their final cession, which had been interrupted by the resultless expedition of Haco. Reginald of Roxburgh, a monk of Melrose, was dispatched to the court of Norway, and the Scottish envoy found the son of Haco well inclined to listen favourably to the proposals of which he was the bearer. Magnus, and the majority of his barons, were convinced of the

* *Fordun*, l. 10, c. 18, 25. *Chron. Man* 1275. *Chron. Lanercost* 1256 (erroneously). This Macmara was probably the leader of the *Scottish* Ivar of the *Norse* faction in Man. The rivalry between the Scottish and Scoto-Norwegian (or Gall-Gael) parties in the north and west of Scotland can easily be traced throughout the history of this period. Man was held by Magnus until his death, "ad firmam," —as a tributary *Maormordom*—subsequently remaining "in the king's hand" apparently, administered by his *Maors* or Thanes, until granted by Robert I. to Thomas Randolph (*Rob. Index*, p. xi., xxiv., and 9, 2). The *Nordreys*, which had remained under the kings of Man after Somarled acquired the *Sudreys*, fell to the Earls of Ross.

inutility of retaining any longer distant possessions, which could never repay the cost and trouble of their defence; and when the king laid the propositions of Alexander before his council, expressing his own readiness to consent to an arrangement, although some opposition was at first encountered, he eventually carried his point. Two Norwegians of distinction were dispatched to Scotland, Sir Asketin the Chancellor, and Andrew Nicolson—the same Andrew whose distinguished gallantry at Largs had rescued his countrymen from destruction—and in the church of the Dominican Priory at Perth, upon the 2d of July 1266, they affixed their seals to a document, making over the ancient kingdom of the Isles A. D. 1266. to Alexander of Scotland and his heirs. Four thousand marks sterling were to be paid within four years for this concession, and the Scottish king bound himself and his successors to an annual payment of a hundred marks, to be delivered every midsummer to the agents of the king of Norway, in the church of St. Magnus at Kirkwall. A general amnesty was to be granted to the Islesmen, who were to be at full liberty to remain under their new superior, or to retire with their property to Norway. The patronage of the bishopric of the Isles was made over to Alexander, with a reservation of all the ecclesiastical rights of the Archbishop of Drontheim; a few clauses were inserted to strengthen the bonds of alliance between the two countries—one for the especial protection of shipwrecked Norwegians—and both parties were bound to carry out their mutual engagements under a penalty of ten thousand marks. Such were the general features of the treaty by which all the islands off the coasts of North Britain, excepting the Orkneys and the Shetland Isles, passed

from under the dominion of Norway into the possession of the kings of Scotland.*

Whilst the war between Henry and his barons was raging in England, and the Scottish auxiliaries, who had been sent to the assistance of their king's father-in-law, were involved in the disastrous defeat of Lewes, Alexander narrowly escaped a contest of a different, but hardly of a less formidable description. For many years the Scottish clergy had been busily strengthening the bulwarks of their liberties against the encroachments of the English prelates, and early in the late king's reign they had obtained a bull from Pope Honorius the Third, authorising their bishops to hold provincial councils without the intervention of either legate or metropolitan.† At these synods one of their own number was chosen to preside, under the title of "the Conservator of the Statutes of the Scottish Church;" and the canons are still preserved which were enacted, or ratified, on two of these occasions. In pursuance of a similar policy, Alexander the Second steadily resisted the entrance of any papal legate into his kingdom until he had received a written declaration, that no disadvantageous precedent should arise if he withdrew his opposition; though on one occasion the legate, with very questionable honesty, carried off this important document when he returned suddenly to England, whilst Alexander was at too great a distance to prevent his departure.‡

* *Chron. Mel.* 1265-66. *Fordun*, l. 10, c. 19. The treaty is given at length in Torfæus, and in *Chron. Man*, p. 52.

† *Reg. Morav.*, No. 257.

‡ *Mat. Paris* 1237, p. 301; 1239, p. 336. According to Paris, Alexander asserted that no legate was ever admitted into Scotland; but, as Lord Hailes observes, the opposition of the Scottish king was probably grounded on the circumstance that the legate was only accredited to *England;* for there are several instances of the entrance of papal legates into Scotland before the treaty of Falaise, but always accredited to that country.

Thirty years had now elapsed since the appearance of any of these papal functionaries, and though Henry had succeeded in obtaining the tenths of the ecclesiastical revenues of Scotland during the minority of her king, he had distinctly disowned all intention of grounding any precedent upon the grant, when Cardinal Ottabone dei Fieschi, who had arrived in A. D. 1266. London as a papal legate commissioned to settle the differences between the king of England and his barons, wrote to the bishops of Scotland demanding a subsidy from every cathedral, and parish church, to cover the expenses of his visitation. With one voice the Scots protested against the injustice of the claim, and instead of remitting the desired sum to the legate, the clergy placed two thousand marks at the disposal of their king to defray the cost of an appeal to Rome. The unanimity between the king and his clergy was destined, however, to be interrupted, for a time, through a quarrel between Sir A. D. 1267. John de Dunmore and the prior and canons of St. Andrews, the king espousing the cause of the knight, whilst the clergy stood by the prior and canons, wielding the usual weapons of ecclesiastical warfare, and excommunicating the refractory layman. Alexander desired the Bishop of St. Andrews to absolve Dunmore, and upon his refusal began to confiscate the property of his see; but nothing daunted at these violent measures, Bishop Gamelin extended the excommunication to all the advisers of Dunmore, excepting only the royal family, whilst the clergy prepared for the contest by transmitting a subsidy to Ottabone, as a sure means of securing his co-operation. At this crisis the difficulty was solved by the moderation of the person most implicated, for Dunmore made his submission to the church; so that when Ottabone

presented himself upon the frontiers, requesting permission to enter Scotland as papal legate, he found the clergy reconciled with the king; and acting upon their advice, Alexander, after examining the credentials of the cardinal, refused to admit him within the kingdom.*

Foiled by the unexpected unanimity of the very parties through whose dissensions he had expected
A. D. 1268. to profit, Ottabone summoned the Scottish bishops to attend at the council of London, with a deputation from the abbots and priors to represent the inferior clergy. Two bishops, an abbot, and a prior, were directed by the Scots to attend at the council, not, however, in obedience to the mandates of the English legate, but by their presence to guard against any infringement upon the liberties of their church; and as they considered that the enactments of the council of London were only binding upon the English
A. D. 1269. church, in the following year they held a council at Perth under their own conservator. Ottabone, upon his return to Rome, persuaded Pope Clement to

* *Fordun*, l. 10, c. 21-23. Tytler omits to notice this dispute between the king and the clergy, whilst Lord Hailes, singularly enough, remarks that "the king suffered the legate to levy part of the disputed contributions." The words of Fordun are, "Ipso anno pacavit clerus Scotiæ Ottabono legato in Anglia commoranti, de qualibet marca sex denarios, et Huberto Cardinali de qualibet marca quinque denarios, *non obstante appellatione de consensu regis*, et expensis sibi propterea præsolutis." It was clearly a bribe offered and accepted, and the clergy were ready to yield every point in order to obtain the assistance of Ottabone in their quarrel. When that aid was no longer necessary, they resumed their patriotism. I cannot agree with Tytler and Hailes in viewing these occurrences in the light of a contest between the Churches of Rome and Scotland. So far from being "an independent church" and "no vassal of the Papacy," the Scottish Church had long resigned herself to entire dependance upon the Papal See, and become the "daughter of Rome," to escape the claims of her grasping neighbour; for she feared the assaults of the papal legates upon her coffers far less than she dreaded the encroachments of the Metropolitan of York upon her liberties. The Scottish clergy objected to Ottabone, not in the character of a *papal* legate, but as a legate accredited to *England* alone; and they cautiously guarded against any future precedent arising from permitting him to enter Scotland.

accede to Henry's request, and to grant the tenths of the Scottish benefices to the English king, to be applied to the purpose of the crusade agreed upon in the council of London; but the Scots refused obedience to the papal ordinance, on the grounds that their own country could equip a body of crusaders with the tenths in question; and when the emissaries of Henry came to levy the contribution, the clergy deputed some of their own body to Rome to lay their cause before the pope. Their appeal seems to have been successful, for when Edward, about fifteen years later, requested a similar grant from Pope Martin, the latter only acceded to his petition on the stipulation that Alexander was not averse to the proceeding, and that the king of England should defray all the expenses of conveying the Scottish crusaders to Palestine.*

As the Scots had declared their readiness to sustain their part in the crusade, it was incumbent upon them to fulfil their promises, and accordingly several of their principal nobles, assuming the cross, departed with their followers for Palestine. Amongst the number of crusaders who never lived to return was Adam de Kilconcath, Earl of Carrick in right of his wife, Marjory, the heiress of the late Earl Nigel. About two years after the death of Earl Adam, his A. D. 1274.
youthful widow was engaged in a hunting excursion, with a gay and gallant company of ladies and esquires in attendance, when a handsome cavalier of noble and distinguished appearance cantered across her path. The countess saluted the knight, and as the courtly manners of the day required, he returned the

* *Fordun*, l. 10, c. 24. *Hailes' Annals*, vol. 1, p. 197. *Fœd.*, vol. 1, pt. 2, p. 642. The regulations of this council are preserved in *Reg. Aberd.*, vol. 2.

lady's greeting according to the agreeable custom of the age, but excused himself from joining in the chase, until Marjory, unaccustomed to refusal, laying her hand upon the bridle, turned his horse's head with gentle force, and galloped off with her captive to Turnberry Castle. The countess had secured her prize, and after a fortnight's imprisonment in the lady's bower, the young heir of Annandale and Cleveland capitulated, and became the husband of his adventurous captor. Alexander was furious at such a breach of feudal decorum, threatening, as a punishment, to confiscate the earldom; but he suffered himself to be appeased by the entreaties of their mutual friends, and contented himself with levying a considerable fine upon the enamoured delinquents. The eldest son of this singular and romantic love-match was the illustrious Robert Bruce.*

For some time past the relations between the English and Scottish kings had been upon the most friendly and cordial footing, and the English princes were more than once the visitors of Alexander when he held his court at one of his frontier castles, particularly Edmund, who appears to have been warmly attached to his sister Margaret. Alexander, in his turn, crossed the Borders, and repaired with his queen and a chosen band of his nobility to York; Henry in person, as well as the English princes, receiving them within the walls of the ancient capital of the north. Little thought the Scots, who were the honoured guests of the noble and chivalrous heir of the English

* *Fordun*, l. 10, c. 29. The custom of a lady saluting a cavalier was not peculiar to Scotland; for some generations later a foreign traveller remarks with considerable satisfaction upon the agreeable usage, then prevalent in England, of the lady of the house and her daughters receiving their guests in a similar manner; taking the opportunity, at the same time, of extolling the beauty and innocence of his fair hostesses.

crown, that in their princely and courteous entertainer they beheld their country's deadliest foe.*

In spite, however, of this appearance of cordiality, Alexander was most watchful in guarding against any encroachments upon the liberties of his kingdom, and when he brought his queen, with a brilliant retinue of nobility, to enhance the dignity of her brother Edward's coronation, and gratified the Eng- A. D. 1274.
lish courtiers with an unbounded display of hospitality and magnificence, he was careful to obtain a full recognition that his presence on this occasion should afford no precedent for establishing any injurious claims either upon himself, or upon any of his successors.† He also purchased the presentation to the Priory of May from the English monastery of Reading, in which the patronage had been vested by his ancestor David; for he was uneasy at the presence of a foreign prior on an island that commanded the entrance of the Forth, and was the usual resort of a fleet of fishing boats, some of which came from the distant coasts of Holland.‡ Nor were these precautions wholly unnecessary, for Edward was already displaying an ambitious and encroaching spirit in his policy towards Scotland; summoning the Scottish nobles who held lands in England to join in his expedition against Wales, apparently in the determination of prosecuting to the utmost every claim which the feudal law allowed. It was probably in this spirit, rather than with the intention of augmenting

* *Fordun*, l. 10, c. 25.

† *Fordun*, l. 10, c. 35. *Robertson's Index*, p. xi. xxi. *Fœd.*, vol. 1, pt. 2, p. 520. Alexander surpassed all others on this occasion, says the chronicler of Lanercost (1274), and according to *Knighton*, l. 3, c. 1, he rode with a hundred knights in his train to compliment Edward, all on dismounting turning their horses loose amongst the people. Prince Edmund, and the Earls of Gloucester, Pembroke, and Warenne, followed his example.

‡ *Fordun*, l. 10, c. 26. *Vit. St. Kent*, quoted in *Macpherson's Wynton*, vol. 2, p. 479-80.

his army by a body of Scottish soldiery, that he called upon the Earl of Buchan to render service in the Welsh wars; which the earl evaded by pleading absence in the north of Scotland on the business of his own immediate overlord, Alexander supporting his excuses by a letter, in which he confirmed the representations of his vassal: and as shortly afterwards the king obtained from Edward a letter in which his "aid in money" was acknowledged as a friendly gift, of which no advantage should be taken to establish a feudal precedent, it may have been his right to an aid of this description that Edward endeavoured to establish over the Scottish nobles who were in the possession of property in England.*

For reasons that have escaped the notice of the chroniclers, the first six years of Edward's reign were suffered to elapse before the tender of the king of Scotland's homage was accepted, though this lengthened delay may, perhaps, be attributed to some difficulty which may have arisen about its conditions.

A. D. 1278. At length, in the early part of 1278, Edward wrote to the Bishop of Bath and Wells, informing him that Alexander had notified, by an embassy, his readiness to perform unconditional homage, and signifying his own intention of repairing to London in "the Quindene of St. Michael"—or the fortnight after Michaelmas day—to accept the allegiance proffered by his kinsman. In the course of the summer, Alexander

* "Nostre service, que nus vus sumes tenuz pur nos terres de Engleterre," are the expressions in Buchan's letter; "auxilium quod vobis debet ratione terrarum quas de vobis tenet infra regnum vestrum," in that of Alexander (*Fœd.*, vol. 1, pt. 2, p. 610, 611). Compare *Trivet*, p. 299, and *Robertson's Index*, p. xxi. xxii., for the letters of Edward "de succursu petendo à rege Scotiæ," and "de auxilio sibi facto in denariis per Dominum regem Scotiæ, quæ non trahatur in consequentiam." The latter was probably to ensure Alexander against the "voluntary aid" from his fiefs in England being quoted at a later time as a precedent for a stated feudal exaction.

received a safe conduct for three months, and was present at the English court in the month of June, when Edward held a Parliament at Gloucester before his departure for France. It must have been upon the return of the English king from that country, and after the time originally appointed for the performance of the ceremony had expired, that, on the Sunday before St. Luke's day, Alexander tendered his homage at Tewkesbury, which Edward declined, assigning as his reason "that he had not his council with him;" but certifying, at the same time, under his own hand, at Coberle, on the following Monday, that the postponement should not be regarded as a refusal of the offer. Eleven days later, on the Festival of St. Simon and St. Jude, in a great assemblage of the English court held at Westminster, Alexander offered his homage for all the lands which he held in England for which homage was due—for some were held by simple fealty—saving always his own kingdom; "and saving also the right of my lord king Edward to homage for your kingdom," interposed the Bishop of Norwich. "To that," replied the king of Scotland, raising his voice, "none has a right save God alone, for of Him only do I hold my crown." No further interruption appears to have occurred, and after the Earl of Carrick (now fully restored to the royal favour), swearing on the soul of his royal master, had made the usual declaration of fealty in his name, to which Alexander again added "for the lands I hold in England," the important ceremony was brought to a conclusion.*

16th Oct.

17th Oct.

28th Oct.

* *Fœd.*, vol. 1, pt. 2, p. 554, 563. *Reg. Dunf.* No. 321. *Doc. etc., Illust. Hist. Scot.* II. *Cal. Rot. Pat.*, 6 *Ed. I.* I have adopted the Scottish account of the ceremony preserved in the Registry of Dunfermlyn, and fully borne out by the letter of Boniface VIII. to Edward. *Fœd.*, vol. 1, pt. 2, p. 907. My reasons for doing so will be found in *Appendix L*, pt. 2.

Alexander was at this time a widower, for he
A. D. 1275. had lost his queen three years previously, in 1275, an epoch marked also by the death of Alan Durward, and by a general revaluation of the ecclesiastical benefices in Scotland, made by Benimund de Vicci in behalf of the Papal See. Margaret was distinguished for her great beauty, and for a pure and gentle character, evidently capable of becoming warmly attached to those whom she loved. She clung fondly to her father, her brothers, and her husband; and on her death-bed, when the dignified clergy hurried to the chamber of their dying queen, she strictly forbade their entrance; and after receiving the last sacraments from the hand of her confessor, gave admission to the king alone. So sudden and unexpected was her death, for she was scarcely thirty-five, that it was attributed in some quarters to poison, though, as no one appears to have profited by the event, it would be difficult to assign a motive for such a crime.* Five
A. D. 1280. years later, her youngest son, David, died at the early
A. D. 1281. age of ten; and, in the following year, the princess Margaret was united to the youthful Eric Magnusson, who had recently succeeded his father upon the

The memorandum in the Fœdera (p. 563), which dates the performance of homage on *Michaelmas day*, is irreconcilable with the testimony of Edward himself, that it was offered and postponed at Tewkesbury *more than a fortnight later*. The memorandum, consequently, must have been drawn up long after the real date was forgotten, and as a historical authority is worthless.

* *Fordun*, l. 10, c. 35, 37. *Chron. Lan.*, 1274-75. Margaret appears to have indulged occasionally in practical jokes, and the chronicler relates one of which the result was serious. The queen was passing an evening on the banks of the Tay, when one of her attendants, "armiger pomposus," bent over the river to wash his hands. "Push him in," whispered Margaret to one of her ladies, and the squire floundered in the water. "What do I care?" said he laughingly, "I can swim;" and the bystanders applauded his coolness, when suddenly he disappeared with a loud cry, his page, who alone plunged in to save him, sharing his unfortunate fate. This the chronicler pitilessly regards as a judgment for the wretched man's participation in the death of Simon de Montfort. *Chron. Lan.* 1273.

throne of Norway. Before the departure of the princess to her future kingdom, her marriage contract was drawn out at great length, and ratified in due form, by both parties, at Roxburgh. Fourteen thousand marks were assigned to the princess as her dowry, and it was arranged that the interest of this sum, at ten per cent, was to be her jointure in case she survived her husband. One-fourth of the dowry was to be sent with the bride to Norway, and, upon her arrival in that country, a strong fortress was to be in readiness for the reception of the future queen and her attendants, in which the princess and her portion might be safely guarded from all danger, until they were both consigned to the youthful bridegroom on the actual day of the marriage. With such care was it thought necessary, in that age, to prevent any infringement of a contract of this description. It was also stipulated that Margaret should be crowned without delay, whilst any failure to carry out the terms of this agreement was to be punished by the forfeiture of the Orkneys, or of the Isle of Man, according as the fault lay with Norway, or with Scotland. Setting out on the 12th of August, with a brilliant retinue, on the evening of the 14th the princess reached her future home, where everything was conducted according to the tenor of the agreement; and, in spite of the opposition of the queen-mother, her coronation was celebrated immediately after the marriage.* The same autumn witnessed the union of the prince of Scotland with the Lady Margaret of Flanders, a daughter of Count Guy de

* *Fordun*, l. 10, c. 37. *Fœd.*, vol. 1, pt. 2, p. 595. From this document it would appear that land returning 100 marks yearly was valued at 1000 marks, or, in other words, it was worth ten years' purchase. Ten *per cent* seems to have been a common rate of interest at that time. Mr. Innes (*Sketches, etc.*, p. 109), gives some examples of land selling at about thirteen years' purchase.

Dampierre; a fortnight passed away in rejoicings and festivities, and then the knights and ladies, who had accompanied the bride from her father's court, took their leave of Scotland and returned to Flanders, highly gratified at the brilliancy and splendour of their reception.*

Alexander might now congratulate himself on the prospect of a numerous lineage, but his hopes were doomed to a fatal disappointment, and fifteen months had barely elapsed before he was childless. As little more than a month had intervened between the marriages of his children, so only a few short
A. D. 1283. weeks separated their deaths; and when Margaret, after giving birth to an infant princess, sunk into her grave in a foreign land, the sorrowful tidings of her untimely death found Scotland mourning for her brother.†

The prince had latterly been wasting away under a slow and lingering illness, through which his mind also seems to have gradually been affected; but even in this state the ambitious projects of England appear to have occupied his wandering thoughts, and, upon the night before his death, he turned to his attendants, talked wildly about an approaching contest with his uncle Edward, and suddenly exclaimed, "Before to-morrow's sunrise the sun of Scotland will have set." He was laid amongst his ancestors in Dunfermlyn, and they who had stood around his death-bed, and listened to his dying words of warning, deemed in after years of misery and woe that the approach of death had inspired "his country's hope and his parents' happiness"—for as such was he

* *Fordun*, l. 10, c. 37.

† Fordun places the death of Margaret in April; Chron. Lanercost 1283, in February. She was no longer alive on 5th February 1283, when Alexander assembled his estates and declared her daughter his heiress, so that the latter authority is probably correct.

fondly remembered—with prophetic visions of the future.*

The first duty of the bereaved father was to settle the succession to his throne, and in a great assemblage of the estates, held at Scone within a week after the death of his only son, thirteen earls, eleven bishops, and twenty-five barons, recognised, in the name of the whole community of the realm, his infant granddaughter, Margaret, the Maid of Norway, as heiress of Scotland and the Hebrides, Man, Tynedale, and Penrith.†

Eight years had passed away since the death of his queen, and Alexander appears to have entertained no thoughts of a second marriage, but he now wished for heirs, and in rather less than two years after the deaths of his children, he solicited the hand of Joleta, a daughter of the Count de Dreux. Their A. D. 1284. union was celebrated at Jedburgh with more than the usual festivity, whilst, to add to the magnificence of the revels, a brilliant and novel masque was prepared expressly for the occasion. The guests were still at table, when a band of musicians ushered in a troop of masquers, fully armed and equipped for the performance of a military dance; the music struck up, the pageant commenced, and the eyes of all were directed with interest upon the show. Suddenly there glided in amongst the throng a skeleton form of Death, mingling among the masquers, joining for a few moments in the dance, and then seeming to vanish unaccountably from the hall. All stood aghast; the music dwindled into a discordant wail; the dancers stiffened with horror; till at length, giving way to

* *Chron. Lanercost* 1283. The chronicler received this account of the death of the prince from the lips of those who were present, the master of his household and his chaplain.

† *Fœd.*, vol. 1, pt. 2, p. 638.

their terrors, the mummers hurried in consternation from the royal presence; whilst not a few of those who had witnessed the mysterious apparition remained firmly convinced, to their dying day, that the grim King of Terrors had appeared in person, to warn Alexander of his approaching doom.*

The ill-omened appearance of the skeleton at the bridal feast added to the sense of gloom which was, A. D. 1285. at this time, beginning to oppress the nation. Men's minds were filled with an undefined presentiment of evil, like the presage of impending woe which overshadowed the couch of the dying prince of Scotland; and though these vague forebodings of misfortune shaped themselves at the time into various forms—a general feeling prevailing that the end of the world was at hand—amidst the horrors of the struggle that was so soon to commence, they were naturally remembered as all but prophetic warnings of the dangers and disasters impending over their native land. The winter was unseasonable; thunder-storms at Christmas, and meteors blazing in the sky, appeared to prognosticate, in the opinion of the sages of those days, the fall of princes from their thrones. Upon the 19th of March, Alexander held a council in the Castle of Edinburgh, to deliberate upon the case of Thomas of Galloway, who now for nearly fifty years had been a prisoner of the Balliols in Bernard Castle. The day was most tempestuous, and the hail and sleet, driven before a cutting north wind, was long recollected by the chronicler of Lanercost as almost too painful to be endured; but all went on gaily

* *Chron. Lanercost* 1284. *Fordun*, l. 10, c. 40. The whole scene appears to have been a practical joke, played off at the expense of the mummers, very probably with the connivance of Alexander, to whom, and to the initiated, the terrors of the masquers were doubtless the best part of the entertainment.

within the shelter of the castle walls, and at the repast served up after the conclusion of the council, Alexander is said to have made a laughing allusion to the fears of the time, advising his barons to dine well, as such a day must surely portend the approaching end of the world. At the conclusion of the meal, he rose to depart for Kinghorn, where his young queen was then staying, persisting in his resolution of setting out in spite of the entreaties of his friends; for all seasons were alike to the dauntless spirit of Alexander. Every step of that melancholy ride was long afterwards remembered with regret. The master of the Queensferry entreated his sovereign not to attempt to cross on such an evening, but the fearless king merely inquired if his officer was afraid to accompany him. "Far be it from me," was the answer, "to shrink from death with your father's son." The dangerous passage was accomplished in safety, and Alexander rode on, with only three squires in attendance, towards Inverkeithing. Darkness set in so rapidly that, by the time the horsemen reached that place, the master of the royal saltworks only recognised the king by his voice, and, startled at his presence on such a night, earnestly advised Alexander to proceed no further. Still the king persisted in his intention, observing, with a smile, that his wants at Inverkeithing were limited to the attendance of two guides on foot, to point out the right path to Kinghorn. A few miles farther even the guides had lost the track, and the whole party was obliged to trust to the instinct of the horses to keep them from falling over the cliffs, when suddenly the animal upon which the king rode tripped over some obstacle in the dark, and as his attendants, startled at the noise, hurried through the gloom to

ascertain what had happened, they stumbled over the lifeless body of their royal master.*

From the circumstances of his death, and from the misfortunes which it entailed upon his native land, it is scarcely a matter for surprise that the Scots should have regarded the memory of Alexander with the same feelings of affectionate regret, with which the Anglo-Saxons of an earlier period used to cherish the recollection of the Confessor. All his errors were forgotten, his good qualities were alone remembered, and he stands out in the pages of Fordun as the model of a great and virtuous sovereign. "In the days of Alexander," says the historian, "the church of Christ flourished, and her ministers were reverenced with the honour which is their due. Vice decayed, craft disappeared, and wrong-doing ceased throughout the land; virtue, truth, and justice, reigning triumphant. He was true of heart, devout in mind, prudent, temperate, and brave, gentle and affectionate in his nature, and just and equitable in all his dealings." The account of Fordun is probably exaggerated, but there was much in the character of Alexander to justify his eulogium; and, to judge from the events of his reign, he was an able, upright, and high-spirited sovereign, wisely bending his best energies towards the promotion of the internal prosperity of his people, but never backward in asserting the rights and liberties of his kingdom. In personal appearance he was tall and strongly made, but in perfect proportion; athletic, without any tendency to corpulence; and with an amiable and light-hearted expression of countenance, which, with his warm feelings and

* *Chron. Lanercost* 1285. The writer was a contemporary, and appears to have been intimately acquainted with the circumstances which he relates.

kindly manner, easily accounts for his universal popularity. His people loved him, for "he was loyal, loving, and liberal;" his enemies even were forced to respect him; and the grim chronicler of Lanercost, who loved him little, is obliged to confess that "all wept his loss," though he adds with his usual bitterness, "except those whom he had loaded with benefits." According to the same relentless authority, who appears to have felt for his untimely death none of the regret which it inspired amongst his own subjects, regarding it rather in the light of a righteous judgment of God, Alexander was doomed to evil from his cradle. His father, riding through the city of Edinburgh soon after the birth of his heir, was accosted by an old woman, the widow of a burgess, who, offering him a handful of *tallies*, addressed him thus: "I was once rich, and am now poor; see all that your servants have given me for the provisions they have extorted from me. Take them all back; I only ask payment for the hen they carried off from me yesterday." "Lady," replied the courteous king, "only have patience for a little while, and you shall be paid for all in full;" then gently pressing his horse with the spur, he endeavoured to pass on, but the quaint and querulous curse of the old crone overtook him. "God grant you may feel, over your only son, all that I felt yesterday over the twisted neck of my chicken!" "Heaven avert it," murmured the poor king, as he thought of his innocent child; but five and forty years later, the widow's unchristian curse is supposed by the chronicler to have been fulfilled, in the catastrophe that plunged all Scotland into mourning. In vain had the king been warned of judgments still impending; in vain had it been pointed out to him

that his wife and his children were taken away for his offences. He married Joleta, who, according to some accounts, had once been destined for the cloister. For three years he encroached upon the liberties and limits of St. Cuthbert's territory—alluding to a dispute, still unsettled, about the adjustment of the southern marches—and on the 19th March, the vigil of the revengeful saint, he fell from his horse, and "slept the sleep of Sisera." Thus wrote the chronicler of Lanercost with a harsh and stern satisfaction; the sole real fault which he urges against the king not being, in his opinion, the true cause of his punishment.*

No laws or statutes of the third Alexander have been preserved, but he appears to have trodden in the footsteps of his predecessors, and to have carried out their policy, which may now be said to have become traditional. He seems to have renewed, and rendered still more stringent, the enactment about agriculture, passed in the first great assemblage of the community in his father's reign, every pro-

* *Fordun*, l. 10, c. 36, 37, 41. *Chron. Lan.* 1241, 1285. "Deus per quæ patravit eum punivit. Solebat enim ipse nec tempori parcere nec tempestati, nec aquarum periculis nec saxorum scopulis, quin de nocte sicut in die cum sibi visum foret, aliquando mutato habitu, sæpe uno comitatus socio, matronas et moniales, virgines ac viduas, non satis honeste visitare." The punishment, however, was for visiting "novam nuptam Yoletam nomine," whom he had married "sibi in dolorem et toti provinciæ in damnum perpetuum." The character of the chronicler, who scarcely seems to have been familiar with the fourteenth chapter of St. Luke, is well displayed in the following passage, "sed certe quia nimis sicca censetur historia seriem texere de cineribus extinctis (the dead king) referam hoc loco ad laudem incorruptæ Virginis quod proxima huic eventui accidit Annunciatione." He goes on to tell how a villein, ignoring the festival of the Conception, yoked his oxen to the plough and bade his son drive them. The brutes, more devout than their master, refused to work, when, snatching the goad, he hurled it at one of them. The weapon, missing the ox, killed his child, "quo corruente fit parricida sui seminis, profugus suæ nationis, pestilens in auctorem salutis, et proditor sui." Exultingly consigning another victim to eternal perdition, "ad laudem incorruptæ Virginis," is his idea of relieving "a dry narrative about dead ashes!"

prietor of an ox being bound, according to Wynton, to plough an ox-gang of land, the measure first taking its name in this monarch's reign. Every man who had neither property nor handicraft, says Fordun, was obliged to dig daily seven feet square of land; and though the historian enlarges upon the royal abhorrence of idleness, "the mother of trifling, the step-mother of all that is good," as the reason for this minute enactment, it is very evident that the king only carried out the regulations for the promotion of agriculture, and the discouragement of pastoral indolence, which are laid down in the statutes of his predecessors with the usual dry abstinence from all moral reflections. Like his immediate ancestors, he regularly made the circuit of his kingdom once every year, proceeding with his justiciaries and a chosen band of knights and nobles from shire to shire, the sheriff of every county receiving and escorting him from one frontier to another, according to the regulations which will be found in William's laws. He further subdivided the office of justiciary which, since his grandfather's reign, had been held by the two great officials of Scotland and Lothian; the northern portion of the kingdom being placed under two supreme judges, the limits of whose jurisdiction were separated by the great central chain of "the Mounth;" whilst southward of the Forth, Galloway was detached from Lothian and placed under a separate justiciary. Ever since the introduction of feudalism and the tenure of knight-service, which brought a body of mounted men-at-arms into the field, great attention seems to have been paid to breeding horses, particularly in southern Scotland, where many of the greater magnates had establishments for this especial

purpose. A marked progress is traceable in this respect in the difference between the thousand mounted followers of the second Alexander, at Ponteland, with their "serviceable but not costly horses," probably with no cross of Moorish blood, and the Scottish chivalry at Largs, fifteen hundred men-at-arms mounted on excellent horses of Spanish breed. Alexander himself appears to have had several studs, but he seems to have become alarmed with a fear, not uncommon in that age, lest the supply of corn should fall short, and limited the number of horses to be kept by the dignified clergy and greater barons, lest the poor, says Fordun, should be deprived of their necessary food. His commercial policy can scarcely be considered enlightened, being dictated in strict accordance with the narrow prejudices of the age. The burgesses were confirmed in all their monopolies, the whole domestic and foreign trade being concentrated in their hands alone. Because the frequent losses of Scottish ships, some captured by pirates, others wrecked upon the iron-bound eastern coasts, impressed the king and his council with alarm lest the wealth of the kingdom should thus perish uselessly at sea, the export trade was peremptorily forbidden, an enactment most reluctantly complied with. Such risks were for foreigners alone, and before the year had passed, says the exulting historian, the Scottish ports were crowded with foreign shipping, and abundance reigned throughout the land; multitudes arriving from every quarter to admire the justice, study the policy, and contemplate the power of the kingdom, and wonder at the sagacity of her sovereign. In other words, the retention of the superabundant raw produce of the country within

the boundaries of the kingdom naturally resulted in lowering its price, and foreign merchants were only too ready to encounter the usual risks of the sea and profit by this cheapness, and by the legal annihilation of all competition. They thus monopolized the whole foreign trade, the Scottish trader being legally disqualified from exporting produce except in their vessels; and the shrewd merchants of Lombardy, eager to take advantage of such an opening, besought the king's permission to build "royal burghs"—or factories—specifying amongst other places a hill above Queensferry, and the Isle of Lenery off Cramond, and only stipulating for a few religious privileges. Tempted probably by their offers, which revealed a vision of future tolls and dues, Alexander was inclined to listen to their overtures, and would thus, unwittingly, have completed the ruin of the Scottish merchants by depriving them of their sole remaining privilege of agency; and it was owing probably to the opposition of the trading class, already sufficiently injured by the prohibitory enactment, that the whole scheme fell to the ground, though, had the king's life been prolonged, it is not unlikely that the Lombards would have gained their end. The royal policy, however, though occasionally erroneous, was evidently dictated by the best intentions, and, as might have been expected, from his anxiety for the general welfare of his people, it was influenced by the same love of peace as had distinguished the career of his father. Both were recollected in after years as "Kingys of Pes," and "Pessybil Kynges;" and amidst the miseries of the subsequent protracted struggle, the Scots fondly looked back upon the reign of their latest sovereign

of native origin as an era of peace and prosperity—"of wyne and wax, of gamyn and glee."*

* *Fordun*, l. 10, c. 41, 42. *Wynton*, bk. 7, c. 10. For the attention paid to horse-breeding see Mr. Innes's "*Scotland in the Middle Ages*," p. 131, and *Sketches, etc.*, p. 190, and *Tytler's Hist. Scotland*, vol. 2, c. 3, p. 183. Famine was one of the greatest scourges of that age, and oats supplied meal to the Scottish man as well as food for the Scottish horse. Hence, probably, the cause of Alexander's enactment. According to Tytler (*Hist. Scotland*, c. 1, p. 52, Edit. 1841), the Lombards "offered to establish manufacturing settlements . . . . Unfortunately the proposal of these rich and industrious men, for what cause we cannot tell, proved displeasing to some powerful members of the state, and was dismissed." I cannot quite agree with this view of the case. "Offerent ad ædificandas . . . . regales civitates," are the words of Fordun, factories rather than manufactories—royal burghs, which would have conferred all the privileges of royal burgesses upon the Lombards. One of these privileges was that none but a free burgess could buy or sell, and after the whole "carrying trade" had been thrown into the hands of foreigners, the Scottish merchant still retained the position of an agent between the foreign purchaser and the native seller of the raw produce of the country. Had the Lombards built these "royal burghs" they would have acquired equal privileges, would have dealt on their own terms with the native producers, and would soon have driven the cramped and fettered Scottish merchant out of the market; and it was probably the natural opposition of the latter class, rather than of the greater magnates, which prevented the settlement of the Lombards. If the shrewd Italians wished to settle in the country "to admire the policy of Scotland and the sagacity of her king," their admiration must have been of a peculiar description.

CHAPTER XVII.

The Conclusion.

The thirteenth century draws to a close, and Scotland is upon the eve of her eventful struggle against the might of England, which threatened at one time, through the interested rivalry of contending factions, to erase her from amongst the number of independent nations. The varied fortunes of that momentous contest belong to the history of another epoch, but before concluding this attempt at throwing some light upon the obscurity of her earlier annals, it may be as well to sketch the condition of the country, and of the people, at the commencement of that era, from which may be dated the more complete amalgamation of her mixed population, and the rise and formation of a national language and character.

In Scotland, as in every other quarter in which the principles of feudalism were acknowledged, the king was by far the most important and prominent personage in the state. To him belonged in theory the whole country; he was the fountain of honour, the source of justice, and the sole arbiter of the policy of the kingdom, whether in peace or war. Practically, indeed, there were many checks upon an authority apparently so unlimited, but, in theory, the doctrine of Imperial Rome had by this time thoroughly penetrated the system of government, and every right, liberty, or privilege was looked upon as

emanating from a royal concession, and almost invariably confirmed by a royal charter. Setting aside, however, the Roman theory, which was at the basis of imperial feudalism, at the close of the thirteenth century, the Scottish feudal king may be regarded, from one point of view, as the leading "Freeholder" of his dominions, the *Apex* as it were of the whole community—of all who had a share in the realm—every free proprietor enjoying, more or less fully, by "royal grace" the same prerogatives, whether financial, military, or judicial, which the sovereign was supposed to hold by "the grace of God," an expression merely meaning that he alone acknowledged no superior or "over-lord." His revenues were derivable from private rather than from public sources, for taxes, in the modern sense of the word, were unknown. All the land which was neither vested in the church, nor permanently granted out in "noble tenure" amongst "the baronage," was crown property, whether in *demesne* or held hereditarily in thanage; paying rent, and under the general superintendence, as in England, of the royal *Vice-comes* or sheriff, the chamberlain being the official who was supreme over the actual treasury. No payments of any description in money were due from lands held in *Franc-Almoigne*, or by knight-service, except in the latter case the usual feudal *aids* on the knighthood of the heir, the marriage of the eldest daughter, and the redemption of the royal person from captivity. The royal burghs were another source of profit to the crown, every burgage tenement being held by rent; tolls and dues also adding a considerable amount to the revenue from the same quarter. Fines levied for offences tried in the higher courts under the name of the "Four Crown

pleas;" *Merchet*, or the payment on the marriage of a vassal's daughter; and *Relief*, or the fine exacted from the heir on succession—usually known as *Heriot* when paid from thanages, or by holders in ignoble tenure—may be also numbered amongst the sources of the sovereign's income, together with the right to the *Wardship* of all noble fiefs during a minority. These wardships, together with the *Maritage*—or the right of bestowing the hand of an heiress in marriage—appear to have been often sold or granted to the next of kin, or to some favoured subject; and in this manner David of Huntingdon seems to have enjoyed the earldom of Lennox, Alan Durward the earldom of Atholl, and Earl Malcolm of Angus that of Caithness, during the minority of the respective heirs; such interlopers occasionally proving stumbling-blocks in the path of modern antiquarians, who in their genealogical researches have forgotten to take this feudal principle into account. The church in the case of all those lands which she held by the old allodial tenure of *Frank-Almoigne*—in free alms—was not liable to the feudal burdens which she nevertheless exacted from all her vassals; but the sovereign occasionally exercised a sort of wardship even in her case, and was not slow to take advantage of all such opportunities. During the vacancy of a see, and until the bishop-elect had obtained his confirmation from the pope, the episcopal revenues reverted to the king, and at one period of his reign Alexander the Third held no fewer than five bishoprics in this manner, whilst the Roman cardinals disputed about the election of a pope.* All such sources of revenue, however, may be characterised as "extraordinary;" the annual amount of the

* *Fordun*, l. 10, c. 28.

sovereign's "ordinary" income being probably estimated from the fiscal rents due from the crown lands and burgage tenements. Every freeholder derived his income, more or less, from similar sources as his sovereign, though it was only the great lay and ecclesiastical magnates who could boast of their dependant thanes or burghers, or claim "Relief, Wardship, and Maritage" from their vavassors or knightly vassals; but Merchet, Heriot, and fines levied for minor offences, in addition to the revenue derived from ordinary sources, could be exacted by every freeholder entitled to hold a court, who, within the limits of his hereditary freehold, was in many respects a petty sovereign.

In his judicial capacity the king was the fountain of justice, and he seems indeed to have passed much of his time in those progresses as supreme judge from shire to shire, for which such careful provision was made in the laws of William. To judge his people was still the ordinary employment of a Scottish sovereign in time of peace, and he seems to have generally made an annual circuit through the sheriffdoms of *Scotia* and southern Scotland; probably limiting his progresses in *Moravia* to Inverness, and seldom penetrating farther into Galloway than Dumfries. The higher courts of law at this time followed the sovereign, for there was neither fixed royal residence, nor capital in the modern sense of the word; the king migrating with his court from one royal castle to another, occasionally residing in an abbey, or with one of the greater magnates amongst his nobility, many of the castles in the more settled districts being, for obvious reasons, connected with a burgh. Edinburgh and Linlithgow, Roxburgh, Jedburgh, and Berwick, were amongst the principal

residences of royalty in southern Scotland, with Dumfries upon the borders of Galloway, and Ayr upon the western coast of ancient Cumbria. Stirling commanded the passage of the Scots-water, and, situated between the two great divisions of Scotia and Lothian, was amongst the most important places in the kingdom, and a frequent and favourite residence of the sovereign. Crail was in Fife, and further northward, on either side of the Tay, were Kinclevin and Cluny; Forfar, Glammis, Kincardine, and Cowie were held for the king along the eastern coasts; whilst Aberdeen and Durris, Banff and Fyvie, were in Scotia beyond the Mounth; and Elgyn, Nairn, and Forres in the ancient province of Moray. Inverness, in some respects the Stirling of the north, long bridled the disaffection of the clans to the westward of the Glen More, though the policy which had attached the great Earls of Ross to the royal cause, during the last two reigns, had removed all serious reason for uneasiness in that quarter. Such were the usual residences of royalty at the close of the thirteenth century, though, besides the castles above enumerated, there were others in various quarters held in the king's name, though seldom, if ever, visited by the royal court. None of the burghs could claim as yet to be the capital, for none could be said to be the permanent residence of the royal court. The capital of an earlier age was the spot where the whole community, or confederacy, was convened to elect their sovereign, or supreme magistrate, whether for peace or war; and where every individual freeholder could claim his "right" in the *magnum placitum*, or great assembly of his "peers." In this sense the "centre of Gaul," where the Gallic Druids met in the territory of the Carnutes, bid fair to be-

come a capital of Gaul; Tara was long the capital of Ireland, Upsala of Sweden, and after the abandonment of Dun-fother, the Moot-hill of Scone continued to be the *chef-lieu*, head locality, or capital of Scotland, where the kings celebrated their coronation. After the institution of shires and provinces a capital of this early description sometimes sunk into a mere name, the men of each shire or province assembling at their own place of meeting, and the royal court moving regularly from the capital of one district to that of another. There was a period when the Freeholders of England, after the discontinuance of the ancient custom, insisted that "Common pleas should not follow the king," murmuring at the idea that the royal courts of law should be held at a distance from their own place of assembly. Courts of law, however, gradually ceased to follow the sovereign, and as the location of the county courts in some one town assigned it a pre-eminence in the shire, so the burgh, in which the royal courts at length became permanently stationary, assumed the foremost place in the kingdom—Mercian London thus supplanting West-Saxon Winchester; Paris, Rheims; and Edinburgh, all other places in Scotland. It is not at all certain, however, whether at this period the constant residence of the royal court at any one spot would have been regarded as an especial privilege. There was a time indeed when a king and his followers lived at free-quarters wherever he went; and in the days of Rufus the wretched peasantry used to fly at the approach of the Anglo-Norman court, leaving their property at the mercy of the royal purveyors, and thankful even in their ruin to escape with life. Such outrages, indeed, were never perpetrated at this time in Scotland, for her

kings were a kindly race; but when the supplies from the royal demesnes and *Can* fell short, the purveyors were empowered to exact the necessary provisions from the burgesses, or neighbouring tenantry, usually paying for them with *tallies*—sticks notched, or *taillés*—the value of such payments, from the contempt expressed for her *tallies* by the malevolent widow who confronted the second Alexander in the streets of Edinburgh, seeming to have been occasionally somewhat questionable. Even the tally, however, was an improvement, and an advance upon the earlier system. Debt is an evil of a civilized state of society; a ruder age, when exaction is only limited by the power of resistance, would scorn to acknowledge such a claim; and payment in notched sticks, though not invariably equivalent to "sterling pennies," was preferable at any rate to payment with the dagger or the cord.

It must not be supposed, however, that at the close of the thirteenth century it was still customary for the sovereign to sit in person in his court of justice, except perhaps on extraordinary occasions. When Earl Harald of the Orkneys was summoned to bring his prisoners to Nairn, the court was undoubtedly at that place, and all the judges of the sheriffdom were in attendance, as bound by law; but the king himself was hunting in the neighbourhood, and his place in the court of justice was supplied, most probably, by the grand justiciary. Four great officers were now known under this title, two for Scotia, north and south of "the Mounth," a third for Lothian, and the fourth for Galloway, or all southern Scotland not included in Lothian, the royal justiciaries alone holding jurisdiction, except in special instances, in the four pleas of the crown. As long as law was

simply "ancient custom," the Graphio, the Scabinus, the Ealdorman, or the Senior thane, were fully capable of dealing with it, and disputed points were referred to the general assembly of the freeholders; but the introduction and development of Roman law materially altered the case, and when the judge was bidden to "read the Roman Code," in an unlettered age, he necessarily had recourse to the clergy. It was a change of vast importance which thus transferred the interpretation of "right," and law, from the whole body of freeholders to a learned and subtle class of jurists, gradually converting the "Advocate" from a powerful and unlettered patron, into a "Councillor learned in the law;" and with the establishment of the civil law in Scotland the grand justiciary must have, ere long, been supplanted for all purposes of real business by his "clerk," who still continues to be the highest officer of the law in Northern Britain, though no longer tonsured, or in orders.*

Second only in importance to the royal court was that of the "Regality," in which the judge of the earl, greater baron, or dignified churchman, exercised a jurisdiction identical, within the limits of the regality, with that of the royal justiciary. Many, if not all the earldoms, seem to have been at this period regalities, bishops, the greater abbots, and barons

* Nowhere is it more clearly shown that the Freeholders were of old the sole "lawyers," than in the argument supposed to have been urged by the Anglo-Saxons against the Conqueror's intention of establishing Anglo-Danish customs over the whole of England; "durum erat eis suscipere leges, *et judicare de eis quas nesciebant*" (*Leg. Conf.* xxxiv.) It must be always recollected that in such passages as the following, "Regis judices sunt barones comitatus, qui liberas in eis terras habent" (*Leg. Hen. I.* xxix.), "the king's judges" were not the legal officials of a later age, but—the jury. The growth and development of an elaborate system of law, and the rise of a separate legal class, have completely changed the character of the modern jury; and though the old principle remains in force, the original reason for its establishment has long since disappeared.

enjoying "the rights and customs of an earl," sharing probably in the same privileges; for it appears to have been the policy of the Scottish sovereigns either to grant—or continue—the extensive powers of an earlier epoch to the great nobility, especially in the north and west, and upon the English border, who were permitted to rule their turbulent districts with all but regal authority; and it must have been in virtue of privileges of this description that, as late as the close of the sixteenth century, M'Gregor of Glenstrae was beheaded upon the green of Kenmore by order of the knight of Glenurchy. In this extensive delegation of the royal authority may be traced the germs of that overgrown power of the greater nobles which was, too often, the bane of Scotland in a later age; and James the Sixth, in his satisfaction at observing the diminished retinue of Argyle after his battle with Huntly at Benrinnes, only expressed the secret feeling of many a Scottish king by his quaint and characteristic remark, "Fair fall thee, Geordie, for sending him home like a subject."* Next to the regality was the court baron, originally with a right to "pit and gallows," which, in later times, was only exercised when the homicide was taken "red hand," or the thief "in-fang"—caught with the stolen property—within the limits of the baronial manor. Courts of vavassors—or knights—and freeholders, are also mentioned in the statutes of William; and one would appear to have existed in early times in every thanage, presided over by the hereditary deempster, all the lesser courts which survived to a later era being probably included under the title of "Heritor's Courts." They were all originally held upon Moot-hills, and in no case was

* *Innes' Sketches, etc.*, p. 345, 385.

a freeholder bound to attend, or "give suit," in any of them, unless he held land of the lord of the barony in which the court was convened.

The authority of the sovereign in his military capacity, as leader of the national forces, was at this time delegated to the two great officials, the constable and the mareschal, both holding their offices by hereditary tenure, the latter being more particularly the leader of the feudal chivalry who were bound to knight-service. The national army was made up of all who held their lands by this latter tie, and of the great body of the people who were bound to "Scottish service." The *Miles*, soldier, or military follower, in the days of Chlovis, was a member of a comparatively subordinate class, resembling probably the Gallic *Ambact* in the time of Cæsar, and only rated at half the valuation of the Frankish *Leud*. In England, also, at a much later period, the *Miles*, or king's thane, as such, was still distinguished from the *Gesithcundman*, or member of the noble class; for though all the latter were undoubtedly obliged to serve in the royal army, the former was not necessarily ennobled by performing such service. After the change introduced in the course of the tenth century, military service gave the title to nobility, and from this period every nobleman was a *Thane*, bound to be well provided with defensive armour; for, by imperial law, every man with a certain amount of property forfeited the whole if he was not provided with defensive, as well as with offensive, armour. The *Miles*, or military follower, was now the Thane's attendant, the *Cnicht;* not necessarily a horseman—a *Reiter* or *Chevalier*—amongst the Anglo-Saxons, who were not a race of riders like the Northmen. After the Conquest, however, and the arrival in England

of the most martial chivalry of the age, the character of a horseman was inseparably connected with the *knight*—the military attendant of the baron, who was himself nothing more than the *Wer*, or *Man*, of the king—even the *armiger*, or man-at-arms, whose name of *ecuyer* marks him to have been once a simple attendant upon the horse—a groom or helper in the stable, when the *Mareschal* was only a farrier—being by this time fully sheathed in mail, and forming, with the knights and barons, the mounted chivalry of the age, who held their lands by the tenure of such service. All the feudal tenantry in Scotland whose property reached a certain value were bound, either to furnish a force of this description, or to serve in person as members of such an array; but the great majority of the nation still held only by Scottish service, and rallied around the standard of their sovereign, armed with little more than the usual weapons of offence. The lowest member of this class seems to have been the tenant of a husbandland, who served as an archer, or a spearman; though within a few years Robert Bruce, probably from the exigencies of the period, obliged every "man with a cow"—every *Bordarius*, or free labourer with a cottage and a few acres of land—to serve in the royal army as a spearman, or an archer, with a bow and a sheaf of four-and-twenty arrows.*

Next to the sovereign may be ranked the two great estates, the clergy and the baronage, who together composed the whole of the free proprietary, the only real "people" at this period, or community of the realm.† The leading members of both these

* *Stat. Rob. I. Act. Parl. Scot.*, vol. 1, p. 117.

† I cannot see any reason why there should be a difficulty about the meaning of the word *Communitas*. It evidently meant "all who had a share," whether in a burgh, a county, or the whole realm—all the freeholders—in its widest

orders—the dignified clergy and the great territorial magnates, whether earls or barons—holding their own courts, with power of life and death; surrounded by a retinue of chamberlains, chancellors, seneschals, and other officers, exactly corresponding with the royal household; followed on all occasions by their own knights and thanes of gentle birth; numbering free towns amongst their sources of income, and burgesses amongst their dependants; entertaining the sovereign himself in their numerous castles, and only appearing in the court of his sheriff by their deputy, or seneschal; were in some sense lesser sovereigns themselves within the limits of their own territories. A few of the higher clergy were very wealthy, their incomes rivalling, if not occasionally exceeding, the royal revenue, and being derived, in addition to the usual sources open to the laity, from tithes and ecclesiastical dues belonging to them in their clerical capacity. Others were comparatively poor, and when the bishopric of St. Andrews was valued at more than eight thousand pounds, the see of Argyle was only rated at two hundred and eighty. Next in value to St. Andrews was Glasgow, reckoned at upwards of four thousand pounds; Aberdeen, Moray, and Dunkeld, followed in succession, all the rest being only rated in hundreds. The great religious houses seem to have frequently increased their income by confiding their churches to the charge of vicars, who generally appear to have been remunerated with the usual third, the remaining two-thirds, or the rector's portion, lapsing, of course, to the monastery; such being, very generally, the origin of vicarages. As the especial "daughter of

extent, just as the baronage included the greatest earls and barons with the smallest yeoman freeholder. In its narrower sense it meant all who could claim freehold-right without any higher title, such as earl, baron, knight. This freehold-right, or *franchise*, has now become—*a vote*.

Rome," the Scottish church was peculiarly liable to the visitations of her legates; and in addition to the usual "tenths" or "fifteenths" exacted for the Crusades, the popes seem to have levied a sort of feudal aid of four or five pence in the mark, or from two and a half to three per cent, upon the property of the church in Scotland. The increasing prosperity of the country during the reigns of the two Alexanders seems to have not passed unnoticed at Rome; and accordingly, in 1275, Benimund de Vicci appeared in Scotland for the express purpose of revaluing the property of the church, a proceeding most distasteful to the clergy, who, "with much expense and more promises," says Fordun, persuaded the legate to return to Rome and prevail upon the Pope to be content with the original valuation, counting seven years for six. The Pope, however, was inexorable, and his judgment was correct, for the "New Valuation" proved that property had increased in value nearly one half since the original taxation; and some idea may be formed of the wealth of the clergy from the contribution of the Cistercian order, which, on this occasion, amounted to fifty thousand marks of silver. Much of this wealth may be attributed to the great improvements introduced by churchmen into agriculture; for though, of course, there were individual exceptions, yet, as a class, the clergy were probably at this period more intelligent and enlightened than either baronage or burghers; and their tenantry, seldom, if ever, called upon for military service except in the royal army, and thus, unharassed by the private feuds of their superiors, prospered accordingly, though perhaps at the expense of their martial character.*

* *Reg. Prior. St. And.*, p. 360. *Fordun*, l. 10, c. 35. The valuation of the archdeaconry of Lothian according to the *antiqua taxatio* was £2864,

The Second Estate, or baronage, included in its widest meaning not only the greater barons, but every freeholder who formed an unit in the whole community of the realm. Four classes are enumerated at a later period, when Scotland was yet more thoroughly feudalized—barons, vavassors or knights, sub-vavassors or squires, and *sub-armigeri*, answering, apparently, to the English yeomanry;* but besides these classes, the "Freeholders by charter" —*libere tenentes per cartas*—in the thirteenth century included a numerous body holding by "free service," though not "in knight's fee," and claiming the privileges of "free and gentle birth;" the thanes, probably, at this period, answering to knights or lesser barons, and the ogtierns to squires. Upwards of a century had now elapsed since it had been remarked by an English writer, in the days of Henry the Second, that whilst the bulk of the villeinage remained unchanged in England since the Conquest, frequent intermarriages had so intermingled the Norman with the Saxon amongst the upper classes, that it was impossible any longer to distinguish the difference of race.† A process of amalgamation, brought about

a tenth of which is £286. The tenth, according to the *verus valor*, was £420, an increase of very nearly one-half. Had the Pope accepted the compromise offered by the Scottish clergy he would have only obtained £334 from this archdeaconry (*Innes' Sketches, etc.*, p. 27. Much valuable information will be found on this subject in the chapter on "the Parish"). Not quite a century later, in 1366, the valuation of the diocese of St. Andrews, rated in the *Reg. Prior. St. And.* at £8018, is estimated, according to the *antiqua taxatio* of that period at £5414, and by the *verus valor* £3507, a diminution of considerably more than *one-half* since the prosperous era of the Alexanders! *Act. Parl. Scot.*, vol. 1, p. 141.

* *Act. Parl. Scot. Leg. M. Mac K.* 9. Though the authority is worthless for the time of Malcolm II., the four classes mentioned were probably familiar to the fabricator of the apocryphal laws.

† The remark occurs in the *Dial. de Scac.*, l. 1, 10, and it is quoted in *Ang. Sac.*, vol. 2, p. 564, note, and in *Madox Hist. Exch.*, vol. 1, p. 391; the former attributing it to Gervase of Tilbury, the latter, with more probability, to Richard "filius Nigelli," Treasurer to Henry II., and subsequently bishop of London in the reigns of Richard and John—an opinion

by very similar causes, had long been in progress, especially throughout ancient Scotia and the South. In earlier times, when purity of blood—the *vier anen* —was necessary for the full enjoyment of "free right," the upper classes seldom intermarried with aliens, never with inferiors, and they stood out, accordingly, with all the marked attributes of a distinct and unmixed race; but after freehold land and the charter conferred free right, and military service and "royal grace" nobility, the case was reversed, and a new nobility, no longer remaining apart from their predecessors, soon lost all their distinguishing attributes by intermarriages. Thus the Gaelic Earls of Buchan and Menteith were now represented by branches of the great Norman family of Comyn, derived, in the female line, from the heiress of Donald Bane. The Norman de Moravilles had long since merged in the Gaelic race of Galloway, just as in England the Norman de Rumelis bid fair at one time to be represented by a branch of the royal family of Scotland. Little difference could be detected between a Norman Lindsay and a Gaelic Ogilvie, and little change was observable in the Earls of Atholl, whether the earldom was held by the old royal line of Atholia, or reverted by heiresses from the Gaelic race of Galloway to the Norman line of Hastings, or passed in the same manner to the Strathbogies, an offshoot from the Gaelic Earls of Fife. Intermarriage and feudalism must have tended by this time to blend

supported by the authority of Mr. Hardy. Whoever the writer may have been, his age is fixed by the declaration that he wrote the Dialogue in consequence of a conversation which he held "anno xxiii. Henrici secundi, cum sederem ad fenestram speculæ quæ est juxta Tamensem," etc; *i.e.*, in 1177. The passage is as follows:—"Jam cohabitantibus Anglicis et Normannis, et alterutrûm uxores ducentibus, sic permixtæ sunt nationes, ut vix discerni possit hodie (de liberis loquor) quis Anglicus quis Normannus sit genere."

the majority of the upper classes, throughout the settled portions of the kingdom, into a kindred "Scottish" race, in which the Scoto-Norman element preponderated everywhere amongst the higher nobility, the amalgamation scarcely extending so far as yet amongst the lesser proprietary. The Anglian element however, and the Anglo Danish, the Norwegian, and the Flemish, entered largely into the composition of what may be called the middle classes of the baronage in different quarters—especially in the south and upon the southern frontier, in the extreme north and north-west, and in the forfeited province of Moray—whilst the general introduction of the territorial surname throughout southern, and most of the settled portion of northern Britain, must have gradually rendered it extremely difficult to distinguish the different races, amongst the upper classes, in either kingdom. Ewen of Argyle is described by the contemporary Matthew Paris as "a gallant and most accomplished knight," and there was probably little, if anything, to distinguish him from the earls and feudal barons who assembled around their sovereign at the the royal court.* All seem to have spoken the same dialect of Norman French, which was equally prevalent amongst the upper classes in Southern Britain —much as French is now used in Belgian Flanders,

* Robert Bruce has been claimed as "an Englishman." He was descended on the father's side from a Norman family which had held the lands of Annandale at the opening of the fourteenth century for nearly two hundred years. On the mother's side he inherited the earldom of Carrick as one of the representatives of a Gaelic line of princes which had ruled over Galloway from time immemorial; whilst his paternal grandfather's mother, through whom he inherited his claim on the throne, was a daughter of the royal house of Atholl. He may be regarded, apparently, as a type of that mixed Scoto-Norman race which supplied three-fourths of the greater nobility of Scotland, and which lies at the root of many a family, Highland as well as Lowland, at the present day. If his descent qualified Bruce to be "an Englishman" at the opening of the fourteenth century, who were the Scots?

in Russia, and during the greater part of last century throughout Germany. The native dialects, however, held their ground, and though not in common use amongst the nobility, were probably fully understood—just as in the seventeenth century it was carefully enjoined upon the heir of Argyle that he should perfect himself in Gaelic; and not a few of the nobles, probably, were *trilingues*, using Norman French in their familiar intercourse, but capable of conversing in "Quaint Inglis," and in Gaelic. French appears to have died out in both countries about the same time, the dialect of the Lothians replacing it at the Scottish court, and, from its similarity to the dialects spoken amongst the whole body of the civic population, the latter gradually assumed the place of the national language; the "quaint Inglis" of this period, akin to the ancient Anglian speech of Northumbria, forming the original basis of Lowland Scotch.*

No Third Estate existed at this period, for the burgesses as yet formed no part of the community of the realm.† Parliaments are indeed alluded to at a much earlier date by writers of the succeeding century, but the use of the word is no proof that the institution existed, even in the form which it had assumed at the period in which the historians were

* Walter of Coventry (*ad. an.* 1212) styles the Scottish kings "Francos moribus *linguâ* et cultu." The Bishop of St. Andrews at the coronation of Alexander III. translated the Latin formulas into French, a useless expenditure of trouble had that not been the language with which the youthful prince was best acquainted. The bard on the same occasion recited the royal genealogy "in the mother tongue;" and as the writer of the tract *de situ Albanie* distinguishes between the Scottish, the British, and the dialect in which the Forth was known as "the "Scots-water"—the speech of the Lothians—it is evident that "the mother tongue" beyond the Forth was Gaelic (*Fordun*, l. 10, c. 1, 2; *Innes*, *Appendix* 1).

† Fordun (l. 9, c. 1), indeed, brings "the Three Estates of the Realm" to the coronation of Alexander II., but he was probably writing with the ideas of his own age.

writing. The germs of our modern parliament, indeed, are undoubtedly traceable in those general assemblies of the freemen, or freeholders, which seem to have been common to all the people of the north; but centuries elapsed before these germs were developed into the great council of the nation. "Right," in early times, was the redress of "wrong" —law or justice—"free right," the claim of the freeman to appeal for such redress to the verdict of his peers, and not to be judged by the simple will of his lord; and, after the purely elective period had passed away, the freeholders met in these great assemblies principally for judicial purposes, and not for consultation about the affairs of the state. Even in the earliest known stage of society amongst the Germans, the great body of the people only expressed their approval of, or dissent from, the propositions originated by their leaders; and the *ealdors* and seniors of an earlier time had long been superseded under the feudal system by the sovereign and his council. The feudal freeholder was originally bound to stated service, and stated *aids;* performing the one, and paying the other, when required, without any question being raised upon a subject about which both lord and vassal were perfectly aware of the extent and nature of their reciprocal obligations; though it was some time before the amount of the fixed aid was finally settled. No parliament was necessary to debate the policy or justice of a war: a simple summons collected the military tenantry of the realm to perform their service of forty days, if required, without inquiring into the reasons which brought them into the field. The necessities of the sovereign appear to have first broken through the earlier simplicity of the system in England. The ordinary revenue of the

crown, in the days of the Confessor, was reckoned in the Roll of Winchester at the annual value of sixty thousand marks; and though the Conqueror is supposed to have considerably increased this amount, his son Rufus was dissatisfied, complaining, and not without a show of justice, that the church held half the lands of England. The adhesion of the barons to the cause of Stephen, or of Henry Fitz Empress, was purchased by lavish grants out of the ancient demesne of the crown; and though Henry subsequently re-asserted his right to many of Stephen's alienations, the royal revenue from this source was greatly and permanently diminished, only amounting at this period to one-fifth of the Confessor's income, or twelve thousand marks a year, whilst the Emperor of Germany was in the enjoyment of a revenue of three hundred thousand marks.* Henry, accordingly,

* *Girald. Camb. de instruct. Princip. Dist. III.* c. 30. From a passage quoted by various authorities, the original of which is in Sprott's Chronicle (p. 114, *Hearne*), it appears that at the time of the Conquest there were 60,215 knights' fees in England, of which the Church held 28,015, so that Rufus was justified in his remark. The origin of this immense property is probably to be traced, not so much to any very extraordinary piety, as to the extravagant grants for quasi-religious purposes which were obtained through gross corruption, and against which Beda protests in his letter to the Archbishop of York. "The ancient demesne of the crown," says Sir H. Ellis (*Introd. to Dom. Sur.*, vol. 1, p. 225), "as recorded in the survey, consisted of 1422 manors;" and from confounding manors with knights' fees, a very erroneous calculation has sometimes been made by deducting these manors from the knights' fees, enumerated by Sprott. It is difficult to ascertain the amount of the ordinary revenue of the kings of Scotland. Mat. Paris (p. 554-55, *ad an.* 1251-52) reckons the dowry of Mary de Couci at 4000 and at 7000 marks, which, assuming it to have been the usual dowry of a third of the royal property, would give either 12,000 or 21,000 marks as the sovereign's income from ordinary sources in the days of Alexander II. The difference is important. Before the close of the next century, the Scots began to exclaim as loudly as the English against alienation of "ancient demesne," and in both countries the detestation of "favourites" owed much of its intensity to the feeling that such alienations in their behalf were eventually paid for by the freeholders at large. Hence, also, the great families of old descent, who could maintain their position at court out of their own revenues, were always more popular than "new men," whose rise was generally paid for in the end at the public expense.

in the course of his reign, introduced the novel tax of *scutage*, encouraging the military tenants of the crown, and, above all, the clergy, to compound for the non-attendance of themselves, or their vassals, in the royal army, by payment of the old fine for such omission; thus replenishing his treasury, and carrying on his wars by mercenary levies, raised and paid in great part out of the supplies acquired in this manner. It was a dangerous novelty, and the immunity from military service thus purchased by a partial relinquishment of real power bid fair, at one time, to cost the feudal freeholder as much as it had already cost the *Leud* of earlier days; but though the talents and personal character of the two first Plantagenets enabled them, occasionally, to fill their treasury by an arbitrary exercise of the royal prerogative, under the weak and contemptible John one universal cry went up from every side for a return to "the laws of King Henry the First;" the encroachments of the crown were carefully enumerated and guarded against in Magna Charta; and from henceforth it became a fundamental principle that none but the stated feudal aids, or regular exactions, should be levied upon the "community of the realm," whether *in-burgh* or *upland*, unless both knights and burgesses were called together to give, by their representatives, their express consent to such "taxation."* Hence arose, in the gradual course of centuries, the right of controlling that policy which could not be carried out without the concurrence of the great body of the people, represented in the Lower House; and thus, to the encroachments of the crown, in consequence of the alienation of its principal source of revenue in early times—the ancient demesne—may be traced the

* For "the Laws of King Henry the First," *vide Appendix T.*

germs of the peculiar connection of the third estate with "the supplies" which were destined, in course of time, to furnish the whole means of carrying on the government. The alienation of "ancient demesne" long continued to be a question arousing the English freeholders to protest, if not to further action, for it was surely followed by an unwelcome summons to a Parliament in which they were only too well aware that they would be called upon to "supply" the deficiency; whilst the House of Lords, representing the dignified clergy and the leading members of the baronage—for the lesser barons were amalgamated with the rest of the community—retained the judicial prerogatives of the original two estates, the clergy and the baronage, still remaining the highest court of appeal in the realm.

No circumstances had as yet occurred to bring about a change of this description in Scotland, where the feudal system, which had been in force since the time of David, was in most points probably identical with "the customs of King Henry the First;" and there is no reason to believe that it had been in any way infringed upon—the arbitrary power of the sovereign scarcely being at any time the danger most to be dreaded in Scotland. In great assemblies, held periodically at various places, statutes appear to have been passed, charters granted, and disputed points of right and privilege settled either by "the verdict of the good country," or by the decision of the greater nobles where their "peers" were concerned. On one occasion canons were enacted, and on another the liberties of the church were guaranteed; but these assemblies were generally the "royal Moots" regularly convened, in the first instance, for the ordinary purposes of justice, and do not

appear to have been expressly brought together for the purpose of passing statutes, granting charters, or for the transaction of other business. They were the regular "Assizes"—or *Sittings*—of the royal court, at which occasionally, when business required it, a council, or *Parliament*, was held. The original meaning of the word parliament was simply "a consultation;" and when there was any thing of sufficient importance to enact or consult about, a parliament, or council, was assembled—or rather perhaps a parliament or consultation was held—sometimes, as in the reign of Alexander II., after the coronation; occasionally in an assembly of both estates, expressly convened; but most frequently at the assizes, when the royal court was present at "the county town," or capital of the sheriffdom. The importance which the present age attaches to the "High Court of Parliament," belonged in earlier days to the king and his council, and occasionally the estates of the realm, at the assizes—the "High Court of Appeal." On ordinary occasions the parliament, or consulting body, was the royal council—*concilium regis*—which was the real governing power in the kingdom. Thus the marriage-settlement of the Princess Margaret with Eric of Norway was arranged by the king, "with the consent of his heir, the prince of Scotland, and of his council;" and when Edward postponed receiving the homage tendered by Alexander at Tewkesbury, he assigned, as his reason, that "his council was not present." The consent of the magnates was usually enough for all stated service, and the ordinary aids, under the strict feudal system; for their knights and other dependants were as much obliged by their tenure to render such service, or supply the necessary aid at the bidding

of their lords, as "the community" is at the present day bound to pay the tax to which its representatives have agreed; and the consent of the knights and other freeholders, which is sometimes appended in charters, and similar documents, to ordinary grants of land or privileges emanating from the sovereign, seems to have been merely a relic of an earlier time, before "commendation" had rendered it incumbent on every freeman "to seek a lord," and was probably at this period as much a formula as the concurrence of "king, clergy, and people" in the election of a bishop. If, however, the service or the aid required was not in accordance with the strict obligations of the feudal law, the "Magnum Concilium," or great council of both estates of the realm, was at liberty to refuse it; and when William wished to make over "the tenths" of his kingdom for the purposes of a crusade to Henry II. in return for the restitution of the two castles of Roxburgh and Berwick, the answer of the Scottish freeholders was a direct refusal, "even if the two kings had sworn to levy the tenths in person." Thus, on this occasion, the estates in convention at Brigham refused to carry out the royal policy; and it may be inferred that whilst for all ordinary purposes, involving only stated feudal service, or feudal aids, the king and his council were omnipotent and beyond control, on extraordinary occasions, for regulating the succession in cases of doubt, for the coronation of the sovereign, or for acknowledging the heir to the throne, the presence of both estates was required, and their consent was necessary before any deviation was allowed from feudal precedent.*

* The aid "a la croix d'outremer" never seems to have been established, either in England or Scotland, as a fixed and settled obligation,

No aids appear as yet to have been levied except in strict accordance with the feudal theory, or as voluntary concessions. The first on record was raised in the reign of Malcolm IV., for the purpose of providing dowries for his sisters the princesses of Scotland. The next alluded to was the ransom paid for William in 1174, a strictly feudal aid, sometimes referred to, apparently, as the *regium geldum*, or royal tax; but when the same king repurchased the independence of his kingdom in 1189, he appears to have provided the 10,000 marks out of his own resources; though from the gift of exactly that amount in the following year from his Optimates, or leading members of the two estates, it would appear that, though not obliged by feudal law to provide the sum in question, they voluntarily assisted their sovereign in redeeming the independence of their native land. No aid is reported to have been levied to furnish the 2000 marks contributed by William towards releasing the English Richard from his German prison, and they must have been raised accordingly from his own private resources; and as the contribution—unless it was a mere token of gratitude towards Richard—must have been connected with the obligations due from the fiefs held by the Scottish king in England, it was probably provided by the military tenants of the Honor of Huntingdon. Neither is there any mention of an aid in 1209, when William bound himself to pay the sum of 15,000 marks within two years to John, half the sum being accordingly placed in the hands of the English king in the following year, when all claim to the remainder was waived on the occasion of the young prince of

which might be levied at the will of the overlord. It always seems to have been the result of a papal injunction.

Scotland performing the usual homage for the fiefs held by his family in England. In 1211, however, after the two years originally appointed for the payment of the whole sum had quite expired, the *Optimates* again come forward, in a Great Council, to present the king with 10,000 marks, the Burgesses at the same time adding another 6000, and within a few months the heir of Scotland proceeds to England and receives the spurs of knighthood from her king. This large contribution can scarcely be supposed to have been levied in 1211 to defray the expenses incurred in 1209, and which had been partly excused, partly paid, evidently out of the royal revenue, in 1210. There was no feudal precedent for such a tax, but an aid for the purpose of knighting the heir of Scotland was a strictly legal obligation; and it would appear as if the Great Council, taking advantage of the opportunity, had contributed a sum large enough, with the addition of the aid from the Burgesses, to cover the king's expenses on both occasions. The conduct of the Scottish estates, both at this time and twenty years before, is probably to be explained by their anxiety to avoid all risk of establishing a precedent injurious to their feudal rights. The time for the assessment of a legal or compulsory aid seems to have been suffered to expire; and when their action could not be misconstrued, the estates appear to have come forward with a generous liberality to assist their sovereign by a voluntary gift; the whole proceeding having probably been arranged previously, the king on both occasions paying the amount required out of his own resources, on the tacit understanding that, when all danger of precedent had passed away, his estates were ready and willing to contribute voluntarily to his assistance.

Only one other aid is alluded to, voted in the early part of the reign of Alexander II. for providing his sisters with the usual dowries when they married; both on this occasion and sixty years before, when a similar concession was made to Malcolm IV., the consent of the estates being required, apparently, for granting of their own free will to the king's sisters an aid which the strict feudal law only exacted for his eldest daughter.*

Such were the sole occasions on which voluntary aids were tendered to the king. The ordinary feudal obligations were levied as matters of course, the Great Council of the realm only being convened for extraordinary and voluntary gifts; but only four instances are recorded of its assembling for such a purpose, and it had never met as yet to provide supplies for the ordinary revenue of the king, nor had the burgesses been summoned to share in its deliberations. They still met in their own court under the presidency of the royal chamberlain, and a cause between a burgess and a rural freeholder was still tried by a mixed jury, as if the two classes stood out as members of separate communities. The earliest occasion of importance on which the burgesses seem to have made their appearance in company with the clergy and the baronage was in the reign of John Balliol, to whose arrangement, in 1295,

* All the historical notices about the assemblages of the Scottish Councils, or Estates, and of the occasions on which extraordinary aids were granted, will be found in the *Act. Parl. Scot.*, vol. I, p. 55. Besides the aid "a la croix d'outre-mer," there was another aid well known in France, "a son fie racheter," which I cannot trace, as an obligation, in England or Scotland. Such an obligation would have undoubtedly enabled William to levy the sum which he paid to Richard from his two Estates; and the gift of 10,000 marks, *after* the money had been paid from the private resources of the sovereign, looks certainly as if the Estates wished to mark their "aid" as *voluntary*, and not *obligatory;* and to guard against the establishment of a dangerous precedent.

for the marriage of his son Edward with a princess of France, the seals of Aberdeen, Perth, Stirling, Edinburgh, Roxburgh, and Berwick, were appended, representing, apparently, the "Communities of the Scottish Burghs."* There is no certain evidence of their regular attendance at "Parliaments," until upwards of thirty years later, when they assumed their place beside the other two estates under circumstances very similar to the causes which first led to the association of the burgesses with the knights and lesser barons in southern Britain—the deterioration of the royal revenue. In a parliament held at Cambuskenneth, in 1326, Robert Bruce laid before his assembled estates the situation in which he was placed through the serious diminution of the royal income, in consequence of the protracted struggle from which the nation had only lately emerged, and the alienation of the ancient demesne of the crown; the necessity under these circumstances of keeping up a suitable state entailing intolerable burdens upon the lower orders. Clergy, baronage, and *burgesses*, admitting the truth of their sovereign's statement, and his pre-eminent services to his native land, unanimously granted him for the remainder of his life, and under certain stipulations, "the tenth penny" of all farms and rents, a tax which was to be levied upon every freeholder in the kingdom, whether holding directly, or indirectly, of the king.† Hence-

* *Act. Parl. Scot.* vol. 1, p. 97.* "Necnon universitates et communitates villarum regni Scotiæ," are the expressions used. *Universitas* was often used for the *Communitas* of a burgh, before it was restricted to its modern meaning.

† *Act. Parl. Scot.*, vol. 1, p. 115. The arrangement was again ratified at Edinburgh in the following Lent—(*Do.*, p. 123.) It would almost seem as if the first Parliament was for *Scotia*, the second for *Lothian*. The old fine of *a tenth* seems to have become the earliest tax: just as in England it was the "reasonable aid." Taxation, in fact, is the development of the old system of fines—commutation for actual service; just as rent and all similar money-

forth the burgesses formed an important portion of the community of the realm, but as a separate third estate and not amalgamated, as in England, with the knights and lesser barons, who in the Scottish parliament were always classed amongst the baronage; whilst the three estates were not divided between the Upper and the Lower Houses, but sat and deliberated in one body. It may have been partly from this cause that the Scottish Parliament never arrived at the same importance in a national point of view, nor was ever regarded in the same light as the great assembly of the estates of the realm in southern Britain. The separation of the *Meliores pagenses*—or "the gentry"—from the greater barons, and their amalgamation with the burgesses in the Lower House as a Third Estate, exercised a most important influence upon the English constitution, which was never thoroughly felt in Scotland; and the spirit of independence, with the habit of free discussion, which gradually became the characteristics of the English Lower House, existed indeed amongst the Scottish people, but, for want of a similar arena for development, can scarcely be said to have been displayed in their House of Parliament, but will be found rather, after the Reformation, in the peculiar constitution of their "Kirk."*

payments are commutations for services of another description, and for payments "in kind."

* For a full and interesting account of the Scottish Parliament, *Vide* "Scotland in the Middle Ages," c. vii. The admission of the Burgesses to a share in the "Commonwealth" is occasionally regarded as the admission of "the people." This is scarcely correct, for the burgesses were essentially a class, and as exclusive in their way as the baronage. There is no reason for considering that the civic freeholder represented "the people," more than the rural freeholder. It was the extension of this tax to the "mesné-tenants" which first brought that class, as in England, into the Parliament. For all strictly feudal aids and services, the consent of the Magnates had hitherto, of course, carried the acquiescence of the Vavasors, but as soon as voluntary "supplies" were

Such were the freeholders of Scotland at this period—the two Estates, or the Community of the Realm, which alone had any claim to be consulted on important occasions as members of "the Commonwealth;" and the Community of the Burghs, so soon to take their place, as the Third Estate, when their co-operation was required to supply the necessities of the sovereign by a novel system of voluntary taxation. But besides the privileged proprietary—whether *up-land* or *in-burgh*—who claimed to be the sole communities, or participators in freehold right, there were numerous other classes, comprising probably the great majority of the population, which may be arranged under the heads of the free-tenantry, the native-men enjoying a limited degree of freedom, and the absolutely servile "Bondmen." The most important members of the first-named class were the tenants at lease, who held their land for a term of years, or for one or more lives, as described by Fordun—more than three would have conferred a tenure in perpetuity—and who seem to have been often known at a later period as "tacksmen." The *tack* was the absolute property of the tenant for the period of his lease, and if he had a *Malar*, or subtenant—if he was not the actual farmer—he might

required, the consent of every freeholder was necessary before the levy of an "unprecedented" tax. In the same Parliament of Cambuskenneth there are, I think, the earliest traces of a movement on the part of the sovereign to limit the almost independent authority of the lords of Regalities, the Sheriff being empowered, in case the Magnate's officials were dilatory in levying the tax, to enter within the boundaries of the Regality and raise it by royal authority. The reason for this delegation of unbounded authority—internal dissension—had for the most part passed away; the power of the king as a purely feudal sovereign was declining with the alienation and depreciation of his private property; he was falling back upon the voluntary support of his "Commons," and already were the symptoms of that alliance between the king and his Commons observable, which was fraught with such different results in the different kingdoms of Europe.

sell or alienate his right at pleasure without consulting his overlord. It must be always borne in mind that in Scotland, as in Scandinavia and in many other quarters in early times, tenancy at rent was not ignoble tenure, and within the last few generations the Highland "tacksman" was often of gentle birth, and a kinsman of the landowner of whom he held his *tack*. It was only the "churl-born" tenant at rent—rusticus firmarius—who was excluded at this period from the privileges of gentle birth, and Fordun seems to have regarded a lease of this description, or a *tack*, as the tenure of "the free and gently born." It was to this class, probably, that William's law referred, in which it was enacted that whenever the king made a grant of his crown-lands "by the oath of the country or of his own free will"—there is no allusion to a charter—the recipient was to hold such land "free and quiet," and to be deprived of no portion of it except by "writ of right," in such a case receiving a reasonable grant of land in exchange; and it may be safely assumed that at this period the equivalent of the Highland tacksman of a later age—the representative of the Ogtiern before the introduction of the charter—was a prominent character amongst the free tenantry holding by Scottish service of the crown, or of the greater members of the two estates. It was of course the great object of this class to convert their tack into a chartered freehold, a process which seems to have been perfectly understood amongst the greater nobles; and from the example of Ewen, Thane of Rothenec, it may be gathered that the proof of undisturbed possession over the third generation, before the "good men of the country," conferred a claim to proprietary right, whilst it was the business of the

royal officials to see that such rights were not acquired at the expense of the crown through their own negligence.*

Another, and probably a far more numerous class, was that of the *firmarii*, or farmers who held at will, by a tenancy renewable from year to year; as may be gathered both from the description in the Chronicle of Lanercost, and from the payment of a sum of money to the farmers of the royal property at Liberton and Lawrenceton, to prevent their quitting the land and leaving it waste after a great mortality amongst their cattle. The removable tenant, who required persuasion to remain, must have enjoyed the freeman's privilege of "going where he willed." Where the land was held in perpetuity, but without a charter, the tenant was known as a fee-farmer, and seems to have been on a similar footing to the tenant "in ancient demesne," or by "tenant-right" in England, who was often known as the villein socman, or privileged villein. The fee-farmer could not part with, nor sublet, his land without first resigning it into the hands of his lord, who instituted the tenant by his own authority, exactly as in England; the tenant by such a tenure being irremovable as long as he performed his obligations, and free to "go where he willed" if he first resigned the land into the hands of the overlord, or his representative. The majority of this class in earlier times will generally be found to have been connected with the thanages, representing, probably, the old free tenantry, under the thane and ogtierns, who had acquired an inborn right to remain on their farms as long as they fulfilled their stated services and paid

* *Act. Parl. Scot.*, vol. 1, pp. 91-369, sec. 24. *Assize Will.* 24. *Stat. Alex. II.* 8. *Ford.*, l. 4, c. 48.

their rent. Subsequently, however, this species of tenure became widely prevalent throughout Scotland, and, until a comparatively recent period, the Scottish *Feuar* clung to his tenancy in perpetuity with an attachment which it was difficult to shake.*

The lowest in the social scale of the farming class was the husbandman, the tenant of a "quarter-holding," or husbandland of twenty-six Scottish acres, rated at the annual value of a pound, for which he seems to have generally paid a rent of half a mark, the usual *third*, with other services, which were often gradually commuted for a further payment in money. As "five cows" were at this period legally valued at a pound, and every owner of that amount of cattle was bound by the statute of Alexander II. to "remain on the land he held during the preceding year," or "to take land and till it," it is evident that the establishment of this class over Scotland was one of the first objects of the royal policy, which, by this time, was probably carried out very generally throughout the settled portion of the kingdom. No one below a husbandman was rated amongst the farming class, unless the account of Wynton may be trusted, that Alexander III. still further extended his father's law, calling into existence the holders of half a husbandland, known as an *Oxgang* of thirteen Scottish acres—perhaps because the tenant was bound to find an ox for the common plough—and the establishment of a rent-paying class of this description, if Wynton is correct, would afford an additional proof of the increasing prosperity of the country at this period. Below the farmers were the free-

* *Chron. Lan.* 1268. *Chamberlain's account temp. Cust. Reg.*, p. 65, quoted by Tytler. *Act. Parl. Scot.*, vol. 1, p. 357, sec. 11. Sir Walter Scott alludes to this feeling in his notes to St. Ronan's Well.

labourers, not mentioned indeed in either chronicle or statute of this era, but alluded to in the regulations of Robert Bruce for attendance "in the host," the "man with a cow" answering, apparently, to a cottager with a few acres of land as an equivalent for a stated amount of labour.*

The tendency of these agricultural laws was unquestionably to favour indirectly the development of freedom. The old servile cultivator who, whilst he was entitled to a plot of land in the district to which he was attached, could acquire no property that he could strictly call his own, and from whom his lord could exact what he pleased, must have had little stimulus to exertion, and was probably contented with barely supplying the wants of life, and leaving a narrow margin for his lord, which he would scarcely trouble himself to increase very largely. But as the upper classes increased in intelligence and refinement, it became their object to obtain money, or produce, which they could exchange with the burgesses for money, instead of living "at feorm," or revelling with their followers in a coarse profusion at the expense of their dependant peasantry. Money payments—a fixed and settled rent—always marked the freeman in the feudal era, and amongst the Anglo-Saxons the *Gafol-swain*, who paid a rent, was carefully distinguished from the *Œhte-swain*, who was the *Œhte*, or absolute property, of his lord. Hence, if for no higher reason, it was undoubtedly the true interest of the lord to convert his servile peasantry into a

* As the *Cotsetla*, or free labourer, according to the *Rect. Sing. Pers.* (Thorpe, vol. 1, p. 434), was to have at least five acres, and as the "man with five cows" seems to have been the equivalent of the husbandman with twenty-six acres of land, and of the *Gebur* with a virgate, the "man with a cow" must have stood in the position of the Cotsetla, apparently, as a free labourer with about five acres of land.

class of rent-paying farmers, henceforth free; or into free labourers, who, by the grant of a cottage and a few acres of land, were bound as freemen to support themselves. The philanthropy of a benevolent churchman or baron may have occasionally bestowed liberty upon the servile peasantry of his manors; or the agonies of a death-bed penitence may have wrung from a remorseful sinner the gift of freedom, which a narrow and mistaken feeling had postponed during lifetime till the latest moment; but the gradual though silent progress of enfranchisement, which is undoubtedly to be traced during the two succeeding centuries, and which, before the close of the third, eradicated the name of serf alike from northern and southern Britain, while it cannot be ascribed to any special enactment on the subject, may be attributed, most probably, to a mixture of self-interest with a clearer and more enlightened appreciation of the real advantages of freedom. The Northmen, ever a shrewd and intelligent people, seem to have been amongst the first to recognise the advantages of a free-tenantry; and it is related in the *Heims-Kringla* how, at an early period, one of the Norwegian Jarls was accustomed to purchase slaves and place them as freemen upon his property, where they cleared away the forest and paid a rent for the land they gained from the waste—the jarl, with the money thus acquired, purchasing more *Thralls*, and enfranchising them on the same conditions; thus improving his own property and laying the foundation of a free rent-paying tenantry, bound by the ties of attachment and gratitude to the family of their original benefactor. This system, based upon a full appreciation of its advantages rather than upon motives of pure benevolence, was not confined to the Norwegian jarl, for

wherever the Northman is traceable in southern Britain at the date of the Domesday survey, it is only amongst the Anglo-Saxons of the eastern Danelage, and upon the frontiers of Anglian Mercia, that he will be found in the midst of an absolutely servile population, elsewhere throughout the Danelage, the free labourer having invariably replaced the serf. It is probable that the same system was equally familiar to the Normans, for the *Bordarius*, or free labourer, was a prominent character in Normandy, the freest province in medieval France—though the Norman settlements, both on the Continent and in England, seem to have most resembled the coalition of Guthrum's Danes with the earlier population of East Anglia—and the agricultural legislation, which may be said to have been a hereditary policy in the house of Atholl, may have been amongst the Norman principles of government imbibed by David and his brother, Alexander, during their residence at their sister's court. It seems to have been usual, in the first instance, to provide the husbandland with stock—generally known in Scotland as *Steelbo*, or *Stuht*—which, upon the death of the tenant reverted, as in the case of the Anglo-Saxon *Gebur*, to the lord; a custom pointing out the original husbandman apparently as a man without property, often a native-man, or servile tenant, incapable of possessing it before his conversion into a rent-paying farmer. It was the class of husbandmen which at this time furnished the main body of spearmen and archers in the Scottish armies, the wealthier farmers being upon a superior footing; for the tenant of four husbandlands —a plough-land or entire holding—who, as the occupant of such an amount of land, probably owned a plough of his own instead of contributing, like the

lesser farmers, a certain number of oxen to the common plough, seems to have been bound to serve as a man-at-arms. In the case of the barony of Bolden, for instance, it was incumbent upon the four husband-lands, or holding, of Prestfield, to find a man-at-arms, who served as captain of the thirty archers supplied by the remainder of the barony. The superior class of farmers dwelt also in their own separate homesteads, and not, like the lesser tenantry, in villages, answering far more to our modern idea of a substantial yeomanry.*

Besides the tenantry at-lease, the more numerous body of the tenantry at-will, and the cottagers or free labourers, a considerable portion of the lower orders still remained in a state of Villeinage, and were known as native-men—the *Neifs* of the corresponding period in England—apparently because they were "inborn," or attached hereditarily to their particular districts. The name of native-man, how-

* *Innes's "Sketches," etc.*, p. 190, 194, 375. *Tytler's "Ancient State of Scotland," Appendix N.* It may be observed that I have not assigned to "the Church" that prominent part in the enfranchisement of the servile classes which is sometimes ascribed to her, for the assumption is scarcely borne out by facts. It may be necessary, in order to avoid misconstruction, to explain that I here use the word "Church" in its narrow medieval meaning of the Clergy; at that time, of course, the Roman clergy. The servile population in England at the time of Conquest was principally to be found upon Church-lands, and the latest serfs in the same country were equally upon the property of the Church. The French laity may have regarded the enfranchisement of the Communes with aversion, but they are clerical protests against the novel encroachments upon proprietary rights which may be read in the pages of Ducange (in voc. *Communia*); one churchman preaching from the pulpit against "those execrable Communes," another styling them "a new and odious invention." It would be unfair to ascribe this feeling to the Clergy in their individual character. "Quieta non movere" has been and always will be the principle of prosperous corporations, whether lay or clerical; and whilst it is highly probable that the condition of Church-vassals as a body was often superior to that of the tenantry of lay proprietors, and that the rule of ecclesiastics was generally mild and beneficent, it is exceedingly doubtful that "the Church" entered needlessly upon untried novelties, or led the way in the general progress of enfranchisement.

ever, like that of Villein, or of Bondman, seems to have had a vague and indefinite meaning, embracing the whole of the population bound by hereditary ties of servitude, whether personal or local, though answering in its ordinary sense to the "adscriptus glebæ," or peasant irremovable from his district. In one sense the Villein was a freeman, in another a serf; and, in early times, when the land was generally cultivated by actual slaves, who were liable to be sold like any other "stock," he who could neither be sold nor driven from his home had, though in a very small degree, the freeman's privilege of "right," and was thus far looked upon as free; whilst in later times, after the introduction of a free labouring class, and the rise of a free tenantry who could quit their holdings, and possessed a right of property in all their stock and produce after payment of a settled rent, the man who could acquire no property, and who was unable to remove from his district, was regarded as a servile cultivator little raised above the condition of an absolute serf. The meaning of the word Villein was simply "villager." Tacitus remarked with some surprise that the Germans of his age, instead of dwelling in groups of houses, or "villages," were accustomed to take up their abode wherever they pleased, in separate and solitary habitations. Long after the settlement of the Teutonic people within the provinces of the Western Empire, the same principle remained in force, and whilst the separate dwelling was the mark of the freeholder, and subsequently of the free tenant, the population attached to the soil was collected in *Vills*, or villages, cultivating the surrounding districts, which were always considered to be included in the Vills, and which, after the complete establishment of

Christianity, answered very generally to the different parishes. The Vill, in the olden time, was under the superintendence of the Villicus—the grieve, maor, or bailiff of the proprietor—who appears to have made an annual distribution of the cultivable land amongst the Villeins, to till for the benefit of their lord without acquiring any proprietary right in the stock or produce. Hence this class originally paid no rent, for "all that they had was their lord's," who could assert his right to exact whatever he chose, or to quarter whom he pleased upon the district. Uninterrupted occupation for a certain length of time, or the same lapse of generations which once conferred proprietary right upon the freeman, secured for the Villein a right of settlement, usually accompanied with the absolute possession of the hereditary residence in the Vill. The system of pure Villeinage appears to have lasted longest upon those properties of the church which are still traceable under the name of "the Grange." The Grange was originally the barn and out-buildings to which the stock and produce required for the use of the monastery were brought, the name of "Granger" being applied to the Villicus, or bailiff, who superintended the servile peasantry, the hereditary continuance of this supervision being probably one of the earliest forms of free tenancy.* There was an early time in which

* The word for farm, *ferme* in the Frank provinces of the north, was in many other parts of France *metairie;* that for farmer, *metayer*, corrupted from the Latin *mediatarius* or "middleman," evidently the man between the proprietor and servile tenantry in early days. Though the system of farming carried on by a class of small cultivators resident in villages—the true development of a villeinage—which is still observable in many parts of the Continent, is scarcely to be found in the British Isles at the present day, there are traces of its previous existence throughout northern and southern Britain, and in Ireland. This natural development of a villeinage has been occasionally described as a peculiarity of—*Celtic race!* These country districts or parishes with the towns belonging to them, when enfranchised, were known as the *Com-*

"the right of blood" was paramount, when every member of the dominant race could claim his separate holding—his *hyde* or *mansus*—thus standing out as a Bonder (to use the Scandinavian term) in his By, or separate dwelling, from amongst the servile population collected in villages, the *Torp-karls*, or Villeins; but the same causes which, in the present day, drive the peasantry into towns in search of a livelihood, or entail the necessity of emigration upon the working classes, whether civic or rural, very soon filled the ranks of the Villeinage with off-shoots from the privileged stock. Even in the days of Beda a grant of land seems to have been the prerogative only of the nobly-born Gesithcundman, or the reward of the Ceorlcundman who had served his time as a Thane, or soldier of the king, the Wessex Ceorl of the corresponding period transmitting no right to his child beyond a claim upon the paternal inheritance; whilst in Alfred's convention with Guthrum, in which it was laid down that "if a man be slain we estimate all equally dear, English as well as Danish, at eight half marks in pure gold," the "Ceorl who sits on Gafol-land" was only reckoned on a par with the Leysing, or Danish freedman, none but the nobly-born and military class ranking on a footing with the Danish freemen, or Odallers. Already in the same king's reign—and it must be remembered that he introduced no new laws—it was incumbent upon the numerous class dependant on the king's ealdorman to remain within their shire unless they had his express permission to depart; they were

munes of France, which must not be confounded with "the Communities" of England and Scotland, or "the Commons" of a later period in England. They were about as different a body as a modern vestry meeting from the House of Commons.

"adscripti shiræ," irremovable from the shire; a restriction which must have narrowed with the various subdivisions of "the county," until the whole class of Geneats, the Ceorls upon Gafol-land, were bound to their respective manors and parishes, and at the time of the Norman Conquest all who were not Thanes, or holders by military service, were in Saxon England more or less attached to the soil.*

* For my authorities I must refer to *Appendices D, E,* and *N.* Cambrensis is continually alluding to the lengthened "servitude" of the English, whom he contrasts on one occasion with their kindred in Germany, who, he adds, "are free." This is a great deal to be attributed to the total absence of allodial right amongst the Anglo-Saxons except in Kent where, consequently, the Gavellers, though ranked amongst the villeinage, attended the Hundred Court, whilst elsewhere "villani vel cotseti vel ferdingi, vel qui sunt viles vel inopes personæ, non sunt inter legum judices (*i.e.*, who pronounced the "veredictum bonæ patriæ"), numerandi . . . . . nec in hundredo vel comitatu forisfaciunt," *Leg. Hen. I.*, c. xxix. If the Kentish Gavellers and the Anglo-Danish Socmen preserved their privileges after the Conquest, surely if the Saxon Geneat had possessed any he would equally have preserved them. This view of the state of Saxon England before the Conquest will, I fear, be regarded as heterodox by the supporters of the orthodox doctrine that villeinage and other enormities, which are supposed to have been originated by that scape-goat, the feudal system, were introduced by the Normans; and that "Saxon liberty," long struggled for, was at length re-established by Magna Charta. The provisions of that venerable document scarcely bear out the latter theory, for they chiefly define the rights and limit the obligations of the feudal freeholder. The freeman's right to be "judged by his peers" was certainly not a peculiarity belonging to Saxon England alone, for it is distinctly laid down in the law of the Imperial Benefice, whilst it will not be found in the Anglo-Saxon codes; and the vital principle that no aid beyond the three legal feudal obligations should be levied, "nisi per commune consilium regni," can hardly be claimed as a fragment of "Saxon liberty" wrung from the grasp of Norman despotism. In the year before the Conquest the population of the Danelage still claimed to live by "the laws of Canute," and only a few years afterwards William pronounced these very laws to be identical with those of his own country, an assertion quite in keeping with the fact that the patron and defender of his great-grandfather against the power of France, and the reconstructor of the Norman duchy, was the grandfather of Canute, Harold Blatand. The institutions of the Danelage were, to say the least, quite as free as those of Saxon England, and the Norman baron and freeholder to the full as independent as the Saxon thane and ealdorman. It seems to have been the object of the barons who obtained Magna Charta to restore "the Laws of Henry I.," the same laws which prince Henry of Scotland swore to retain in Northumberland,

The state of society in which the separate dwelling marked the freeman, and the cluster of cottages the servile Vill, was not peculiar to the Teuton and the Northman, for it is just as traceable amongst the Celts, the Irish Brugaidh in early times, the free member of the clan living in his separate *Brugh*, answering exactly to the Scandinavian Bonder in his By; whilst the Biotagh was the villager, sharing and cultivating in common the lands of the *Baille-Biotagh*, the Cymric *Taog-Tref*, or Vill. In Gaelic Scotland, where the lord's demesne seems to have been known as the *Baille-Tighern*—perhaps in contradistinction to the *Baille-Biotagh*—the Brugaidh and the Biotagh, or their equivalents, were certainly in existence, the former class after the introduction of the charter supplying, according to their standing, the Ogtierns and earliest fee-farmers, the Biotaghs answering to the native-men—the *Daer-Clans*, or Attach-tuatha, attached to their hereditary districts. It was this latter class, in which, as elsewhere throughout Western Europe, offshoots from the privileged race had long since been blended in one common mass with the servile population of alien origin, that the policy of the Scottish kings endeavoured to render agricultural instead of pastoral—tillers of the land for their lord's benefit—aiming at converting "the man with five cows" into the husbandman, and all with a less amount of property into farm-labourers; for their position as irremovable occupants of a cer-

and which might probably be described as Norman feudalism engrafted upon the "ancient custom" of England, whether Saxon or Danish. There is nothing that particularly marks the Anglo-Saxon code as pre-eminently free above any other Teutonic or Scandinavian code; but at the root of English liberty lays the fact that Norman feudalism was introduced, not as in Neustria, upon a basis of "Roman law," but upon the kindred institutions of the free north.

tain district, without any right to property of their own, naturally disposed them to cling to the indolence of a pastoral life and neglect the harder labour of the plough. A free tenantry, in the later sense of the word, was probably unknown before the introduction of the feudal system, all who were neither absolute serfs nor members of the privileged classes, and in a certain sense freeholders by "right of blood" under the royal officials, ranking amongst the native-men, whose sole right consisted in a claim upon the hereditary cottage, and an annual allotment of land from the Villicus, or Steward of the Tighern. Freedom, however, was not necessarily conferred at once upon the native-man by converting him into an agriculturist, for no royal enactment could have interfered thus far with "the right of property," and from the wording of the statute of Alexander it is evident that it only ordered the Villeinage to till the land "for the benefit of their lords." But the change was in progress; even in the days of Alan Durward the rent-paying tenant, who must have been a free-man, though holding his land, as of old, from year to year, is described as the type of a numerous class amongst the agricultural population of Scotland. The exigencies of the succeeding epoch, which called even the cottager into the ranks of the Scottish armies, and which so soon caused the less efficient tenure of Scottish service to be supplanted, throughout the settled portion of the kingdom, by the feudal principle which placed a well-armed soldier in the field, must have tended much to hasten the advance of enfranchisement. Military tenants were required, and military tenants were freemen. Ere the close of the fourteenth century writs for the recovery of fugitive native-men ceased to be issued, and before

the stain of hereditary slavery had been expunged from the English code, the serf was a being of the past in Scotland.*

Little alteration in race or language could have been observable as yet amongst the agricultural classes of Scotland, for a population of this description is the last to change. Intermarriage amongst the upper classes had indeed, as in England, fused the different races into one, and the amalgamation, already nearly complete in the ranks of the higher nobility, was probably fast extending amongst "the gentry" throughout the settled portions of the kingdom, but it had as yet scarcely reached the tenantry and villeinage. The native-man of the Lothians was generally of Anglian origin, the Cymric and Galwegian elements mixed with the Gaelic prevailing in the west of southern Scotland; whilst throughout *Scotia* and the greater part of *Moravia* he was usually a native Scot; in the north and west of the latter district, and amongst the Isles, the Norseman contributing his share to the class in question. But little noticed in medieval history, the lesser tenantry and the population attached to the soil formed the suffering classes of the age, upon whom fell the burden of famine, of pestilence, and of war. Some of the enactments of the burghal laws seem to point to the probability of a dearth or famine as a contingency to be prudently guarded against; and on such occasions, where the right of exaction was unlimited, the native-man must have approached the verge of starvation long before his proprietor endured the pangs of want. The feudal aid, whether obligatory

* Tytler's "Ancient State of Scotland," sec. 2. (*Hist.*, vol. 2, p. 217.) "The last case I have met with," writes Mr. Innes (*Sketches, etc.*, p. 145), "of proceedings under the formerly well-known brief for recovering fugitive slaves," "was in the court of the Sheriff of Banffshire in 1364."

or voluntary, was supplied eventually by the lower classes, upon whom also fell the weight of all those oppressive burdens which, though connected generally with the feudal system, were practically in existence long before its rise; whilst in the case of the free tenantry, there were times of difficulty and distress when the right of limited exaction must have been pressed to the utmost, even if the strict boundaries of the law were not transgressed. The intolerable sufferings of these classes through the burdens of the English war, and the consequent impoverishment and alienation of the original sources of the royal revenue, formed the groundwork of King Robert's appeal to his freeholders in the parliament of Cambuskenneth, when, for the first time in Scottish history, the Three Estates of the Realm agreed to meet the exigencies of the times by a voluntary tax levied upon themselves.*

But the century which was now passing away had been a period of peace and plenty rather than of scarcity and war, and there are abundant incidental proofs of the wealth and prosperity of the country during the reigns of the two last sovereigns. It was an era of church-building, and an association for this purpose had been already formed before the close of the preceding century, in this particular case for the restoration of Glasgow Cathedral; but while

* *Act. Parl. Scot.*, vol. 1, p. 115. The words are "quod Statui suo congruentem sustentacionem non habuit absque intolerabile onere et gravamine plebis sue." The *plebs*, which I have elsewhere rendered "lower orders," must here mean all the unprivileged classes upon whom the king might exercise the right of exaction, whether limited or unlimited. It cannot have included the "privileged" estates, for how could they have relieved their own burdens by the voluntary imposition of an additional annual tax? It is easy, however, to understand how an annual tenth, voluntarily given from "privileged" property by its owners, must have relieved the pressure upon the "unprivileged" classes.

there are numerous examples still existing of the early Gothic architecture which succeeded to the massive pillar and the circular arch prevalent throughout Scotland during the twelfth century, specimens of the succeeding style which was in vogue in England during the reigns of the early Edwards are comparatively few, their very rarity testifying to the altered circumstances of the time.* The peace and security of the earlier period must have afforded ample leisure for cultivating the science of church architecture, which was necessarily neglected in the intensity of the struggle for independence. Little can be said about the secular architecture of the corresponding epoch—if the use of such an expression may be allowed—though from a comparison of the few remaining vestiges of the older Scottish castles with the buildings of a later time, they may be safely pronounced to have been superior to the tall square towers which mark the extinction of the earlier race of magnates, and the rude insecurity of the subsequent age. It was scarcely in a building of the latter description that the head of the house of Bisset received his sovereign with the queen and court, whilst far away, at Haddington, his kinsmen were engaged in murdering the youthful Earl of Atholl; and the principal castles of the greater magnates, who, within the boundaries of their "Regalities," kept up a state little inferior to their sovereign's court, would appear to have vied with

* The association in question "was instituted by Bishop Jocelin about the year 1190, and had a special charter of protection from King William the Lion." *Innes's Sketches, etc.*, p. 298. The whole chapter (x.) abounds with interesting information on this subject. From the tenor of the charter (*Reg. Glasg.*, No. 76) the "fraternity" would appear to have been established for soliciting assistance from the "probi homines," rather than for architectural purposes; and the venerable cathedral of Glasgow may be looked upon as one of the earliest known instances in Britain of a church "built by subscription."

the usual residences of royalty in grandeur and extent. Scotland must at this period have been studded with castles, for within six years after the death of the first Edward, Bruce destroyed no less than a hundred and thirty-seven, though few, probably, were of the dimensions of the more important royal castles, or of the principal residences of the leading nobility.* The great restorer of Scotland's liberties fell back upon the tactics of his early predecessors, rightly judging that the mountain and the moor, the forest and the moss, were surer bulwarks against the superior power of "the southron," than the strongest wall or the deepest moat; but the consequences of his policy were disastrous in a social light, and though the greater evil was averted by the lesser, the advancement of Scotland during the succeeding generation was necessarily sacrificed to her independence.

The condition of the Burghs during an era so favourable to commercial enterprise must have kept pace with, and probably surpassed, the prosperity of the rest of the kingdom. Berwick, long the most opulent burgh in Scotland, and described by Newbridge in the reign of William as "a noble town," is represented in the Chronicle of Lanercost as "the Alexandria of the north," its wealth justly entitling it to a foremost place amongst the commercial cities of Britain; for its customs were farmed during the reign of the third Alexander for a sum amounting to more than a quarter of the whole revenue of England derived from similar sources. An excellent example of the spirit and opulence of a Scottish burgher of those days is afforded in the well-known story of Canute, surnamed the wealthy,

* *Ford.*, l. 12, c. 16.

a citizen of Berwick, who, in 1156, fitted out and manned fourteen vessels at the cost of a hundred marks of silver, to rescue his wife when she was carried off in one of his ships by Earl Erlend of the Orkneys. The fisheries were also a fruitful source of wealth at this period, the Isle of May being the head-quarters of the flotilla, which, from all quarters of Scotland, England, and the coasts of Holland and Flanders, resorted to the Firth of Forth for the purposes of fishing. The greater portion of the fish which were caught was exported abroad, Aberdeen enjoying the pre-eminence in this branch of trade, whilst Inverness, from its vicinity, probably, to the great forests of the interior, was celebrated even in foreign countries for ship-building.*

The most convincing proof, however, of the prosperity of the kingdom during the two last reigns is afforded by the total absence of all mention of voluntary aids, and perhaps also by the purity of the "Sterling penny." The earliest depreciation of the currency is supposed to have occurred in the time of

* *Macpherson's Annals of Commerce*, vol. 1, p. 397, 436, 445, 446. *Do. Wynton*, vol. 2, p. 479-80 (quoting a life of St. Kentigern). *Newb.*, l. 5, c. 23. *Chron. Lan.* 1296. In the year 1249, according to *Mat. Paris*, "a wonderful ship" was built at Inverness to carry the French lord of St. Pol to the Crusades. The sum paid by the Gascony merchant for the customs of Berwick was £2190 : 8s, whilst the whole customs of England in 1287 only reached £8411 : 19 : 11½. The story of Canute will be found in *Torf. Orc.*, l. 1, c. 32. This was not the first of Erlend's escapades, for he had eloped only a few years before with the beautiful Margaret, dowager Countess of Atholl, and—his own aunt. One spark of chivalry would have prompted the original preserver of the anecdote to spare a line to tell the fate of the lady, even at the cost of dilating less about the wealth of her husband. But the dry old chronicler was not a Froissart; and he has left us in ignorance whether the Earl bore off his prize in triumph, to the questionable satisfaction of the fair Margaret, or whether the brave Canute was rewarded with the success he so well deserved. It may be some consolation to the lovers of "retributive justice" to know, that the career of the earl was cut short two years afterwards, when he was surprised and slain by his rivals, Harald and Rognwald.

William, coinciding very suspiciously with the large sums which that king was obliged to pay at different periods of his reign; but he appears to have remedied the error when he "renewyd his moné" in 1195, and with the exception of a slight alteration in the early part of the third Alexander's reign, when, to check the practice of clipping—an indirect testimony to the purity of the silver—the cross was extended from the centre to the edge of the penny, the coinage remained unaltered in appearance and weight until Robert Bruce, imitating the example of his mighty enemy, added as much alloy to the standard as enabled him to coin twelve additional pennies out of the pound of silver.* The adulteration of the coinage may be regarded as a similar expedient to the enforcement of an inconvertible paper currency in a more enlightened age, the depreciation in the value of the medium of exchange being invariably followed by an immediate rise in the price of all the necessaries of life; and thus the sovereign's debts were paid at the cost of the general interests of the community. A return to the original standard may be compared to the resumption of cash payments, and it speaks volumes for the prosperity of Scotland in the thirteenth century that, after her temporary approach towards "insolvency" in the reign of William, the purity of her coinage was restored, and no further depreciation attempted for a period of a hundred years.

Still more important testimony, however, is afforded upon this point by the absence of all mention of voluntary aids; for the assistance given to Alexander II. towards providing portions for his elder

* *Macpherson's Annals of Commerce*, bk. 7, c. 8, l. 579-80. *Chron. Mel.* vol. 1, p. 397, 436, 445, 446. *Wynton*, 1195.

sisters, was simply the spontaneous offer of an aid to which William would have been legally entitled had their marriages been finally arranged during his lifetime. The threefold legal obligation, with a fixed relief, and other burdens incidental to the tenure of knight-service, may be regarded as the ordinary—though only occasional—taxation of the period, which the amount of property attached to the fee was supposed to be amply qualified to meet; and when actual military service was not required, this occasional taxation was necessarily very light indeed. The voluntary aid, levied with the consent of the assembled freeholders, may be compared to extraordinary or increased taxation; whilst all exorbitant reliefs, "unreasonable" aids, and other irregularities contrary to the strict principle of the feudal system, whether simply extensions of the royal prerogative, or actual encroachments upon freehold right, may be described as excessive, or arbitrary and illegal taxation. The expenses of the feudal sovereign were equivalent to the expenditure in modern times for "carrying on the government," and as long as they were defrayed out of the ordinary revenues of the crown, without recourse to any "extraordinary" levy, the circumstances of the country may be supposed to have been prosperous, and the people contented. After the disastrous reign of Stephen, however, the expenses of the English sovereign seem to have far surpassed his revenue derived from ordinary sources, and the *Scutage*, which was then for the first time levied, was one of those extensions of prerogative which were more difficult to resist than arbitrary and illegal encroachments. It was grounded upon the undoubted right of the sovereign to summon his military tenants to perform their annual service of

forty days in his army, the advantages accruing to the tenant from saving the expense of such attendance being henceforth paid for by the old fine for absence from "the Host," or an equivalent. Hitherto the vassals of the crown seem to have been permitted to enjoy the advantages of occasional exemption from service without the payment of a fine; and when in earlier times the Frank freeholder, by an Imperial modification of the old Salic law, was excused attendance upon certain courts unless he was actually concerned in the business to be there transacted, no profit appears to have been made out of the innovation by exacting a fine for the concession. Scutage, however, was strictly within the limits of the prerogative, for the king might have enforced attendance if objections were raised to compounding; and accordingly in Magna Charta the right to levy it was admitted, but regulated—like the other feudal obligations, including voluntary aids—when the equivalents of "arbitrary and illegal taxation" were abolished; for it was the object of the barons to raise a barrier against the encroachments of arbitrary prerogative and to define the full extent of freehold right, long since enjoyed by every freeman, rather than to terminate an imaginary struggle of a century and a half by the re-establishment of "Anglo-Saxon liberties."

Scotland, however, presented in many points a different picture from her southern sister during the period which was now fast drawing to a close. No scutage appears to have been levied at any time, and the Scottish freeholder, after he had attended upon the royal court during the progress of the king through his sheriffdom, seems to have been allowed to return home, if there was no occasion for his

services in a military capacity, without paying for the privilege by a fine, which was only levied in cases of actual absence from the royal army in the field. The royal assizes appear to have been regularly held at the capitals of the sheriffdoms, thus entailing no unnecessary expense and trouble upon the freeholder in following the royal court for "common pleas," or for "disseissin," and other questions about property, which were thus removed from the "neighbourhood," by whose verdict they ought to have been decided—grievances of the English freeholder which were sufficiently burdensome to be especially guarded against in Magna Charta. No voluntary assistance was required from him, as in England, for the prosecution of foreign wars, and for various other purposes; for not only do the Scottish sovereigns appear to have restricted their expenses within the limits of their ordinary revenue, whilst they were never backward in exhibiting a regal magnificence when the occasion required, but they often display a command of money which marks them to have been princes of considerable private wealth. No assistance was asked from the nation when the princess Marjory received 10,000 marks with "a noble dowry in Scotland"—to use the words of the Chronicler of Dunstable*—on her marriage with the Earl of Pembroke, her brother paying an additional 500 marks for the wardship of her youthful husband; Alexander's command of money on this occasion contrasting singularly with the necessities of Henry, who excused the delay in paying the long-promised dowry of his own daughter by pleading his inability to find the means, a confession

* Quoted in *Macpherson's Wynton*, vol. 2, p. 481, where mention is made of most of the sums expended at various times by the early Scottish kings.

sufficiently significant of the state of the English exchequer. Indeed there always appears to have been a difficulty in obtaining payment from the English king, and the Rolls abound with acknowledgments satisfactory, no doubt, and instructive to the historian at the present time, but in a commercial point of view not a little suspicious.* The purchase of the Orkneys was completed entirely out of the private resources of the king, and 4000 marks were made over at once to the king of Norway without any difficulty, with a promise of the annual payment of another 100, equivalent to about 1300 more, according to the value of property at that time. When the king was able to maintain a becoming state and dignity, to display on suitable occasions—as at the coronation of Edward I.—a lavish magnificence, to raise large sums of money for various purposes, and at the same time to abstain from all appeals to his subjects for assistance, it may be assumed that the kingdom was flourishing and wealthy, and that the prosperous circumstances of the sovereign were shared in a certain degree by every class in his dominions.

The true secret of the wealth and prosperity of Scotland is to be sought in the wise and enlightened policy of her sovereigns, inaugurated undoubtedly by David, under whose peaceful and beneficent rule the whole of the North of England equally partici-

* The acknowledgment, for instance, of the annual payment of £200 due to Alexander II. after the convention at York, appears so often in the Patent Rolls, that it raises a suspicion that for a considerable time the claim was acknowledged rather than paid. I have not alluded to the "benevolences" paid by the two Alexanders to Henry and Edward, for they were evidently "voluntary aids" due from, and paid out of, their lands in England. The "Littera de auxilio facto in denariis per Dominum regem Scotiæ, quæ non trahetur in consequentiam" (*Robertson's Index*, p. xxii.), referred to the "benevolence" of Alexander III., to mark it as a voluntary aid, not a necessary obligation.

pated in the prosperity of his own kingdom. In one point, however, his policy was destined to be aggressive. He naturally sought to add the earldom of his wife's father, which lay in such tempting proximity to the Tweed, to the dominions he was to bequeath to his descendants; whilst the English kings were as naturally averse to intrust this important fief to a neighbour so powerful as the king of Scots, and thus practically to withdraw their frontier to the Tyne. Hence arose the jealousy between the two crowns during the latter half of the twelfth century; hence the disastrous war and capture of William, entailing for a time the subjection of Scotland, the revolt and hostility of Galloway, and a doubtful and dangerous contest for many years against his own cousin and rival MacWilliam. The depreciation of the coinage in the earlier part of William's reign, and his appeals on two occasions to the assistance of his subjects, attest the comparative impoverishment of his kingdom from these causes; but a different spirit appears to have actuated him towards the close of his career, and in his secret arrangement with John may be traced a disposition to effect a compromise. His son and grandson followed in his footsteps, directing their attention principally to the internal regulation and consolidation of their own dominions, and the result was an advance in the social state of Scotland which it is vain to look for in the succeeding reigns. Peace was the great object in view of both the Alexanders, and peace was indeed the only true policy of both countries. Long ago the sagacity of the Norman Conqueror had detected the wisdom of a conciliatory policy towards England's less powerful northern sister, his grant of manors, or subsidy, to the Scot-

tish Malcolm ensuring uninterrupted tranquillity upon his northern frontier. Such was always the feeling of the English barons, who so often raised their voices in favour of "peace with Scotland;" and though Hubert de Burgh may have been actuated by interested motives, his was the policy of an English statesman—that of his rival, Des Roches, of an intriguing alien. Many another prince may have bequeathed a brighter name to posterity, for the miseries and sufferings attendant upon a career of conquest read coldly in the still, calm, page of history; but the triumphs of the Scottish Alexanders were unstained by blood, and whilst they were ever ready to assert and defend the independence of their native land, no higher encomium can be passed upon their memory than that they lived in the recollection of their subjects as "kings of peace."

The last sovereign of the line of Atholl sleeps with his fathers in Dunfermlyn, and the sceptre of a noble and a far-descended race awaits the grasp of a sickly and unconscious infant. Fondly yet fearfully the hopes of Scotland turn towards that northern land where dwells the motherless child, sole fragile barrier against the rivalry of a fierce nobility, and the ambition of an able and unscrupulous foe. Already the threatening cloud which dimly overshadowed the deathbed of the prince of Scotland gathers darkly and gloomily in the distance; a presentiment of impending evil oppresses the nation; and in the words of the earliest known specimen of Lowland Scottish poetry, a simple and touching lament in which is embodied the affectionate regret of the

people for the loss of their popular and kind-hearted sovereign :—

"Quhen Alysandyr oure Kyng wes dede,
That Scotland led in Lẅve and Le,
Away wes sons of Ale and Brede,
Of Wyne and Wax, of Gamyn and Gle ;
Oure Gold wes changyd in-to Lede,
Chryst borne in-to Virgynyté,
Succour Scotland, and remede,
That stad is in perplexyté."*

* *Wynton*, bk. 7, c. 10, l. 527.

Lẅve and le, love and peace or tranquillity. Under the *lee*, means under the shelter—in peace.

APPENDIX.

Appendix A.

I.—KINGS OF THE PICTS.

		Annals.	Chron. Pict.
48.	Bruidi Mac Malcon	d. 584,	reigned 30 years.
49.	Gartnay Mac Donald	d. 599,	... 11 ...
50.	Nechtan Hy Firb		... 20 ..
51.	Kenneth Mac Lachtren	d. 631,	... 11 ...
52.	Gartnay Mac Foith	d. 635,	... 4 ...
53.	Bruidi Mac Foith	d. 641,	... 5 ...
54.	Talorcan Mac Foith	d. 653,	... 12 ...
55.	Talorcan Mac Eanfred	d. 657,	... 4 ...
56.	Gartnay Mac Donald	d. 663,	... 6½ ...
57.	Drost Mac Donald	d. 672,	... 7 ...
58.	Bruidi Mac Bili	d. 693,	... 21 ...
59.	Gharan Mac Enfisedech		... 4 ...
60.	Bruidi Mac Derili	d. 706,	... 11 ...
61.	Nechtan Mac Drost	res. 724,	... 15 ...
62.	Drost Alpin	exp. 726, d. 728,	... 5 ...
	Nechtan Mac Derili	d. 729,	
63.	Angus Mac Fergus	d. 761,	... 31 ...
64.	Bruidi Mac Fergus	d. 763,	... 2 ...
65.	Kenneth Mac Feredach	d. 775,	... 12 ...
66.	Alpin Mac Feredach		... 3½ ...
67.	Talorcan Mac Angus	d. 782,	... 4½ or 5.
68.	Drost Mac Talorcan		... 2½ ...
69.	Conal Mac Taidge	exp. 789,	... 5 ...
70.	Constantine Mac Fergus	d. 820,	... 30 ...

	Angus Mac Fergus	d. 834,	... 12 ...
	Drost Mac Constantine Talorcan Mac Uitholl		... 3 ...
	Eoganan Mac Angus	d. 839,	... 3 ...
	Fered Mac Bargoit		... 3 ...
	Bruidi Mac Bargoit		... 1 ...

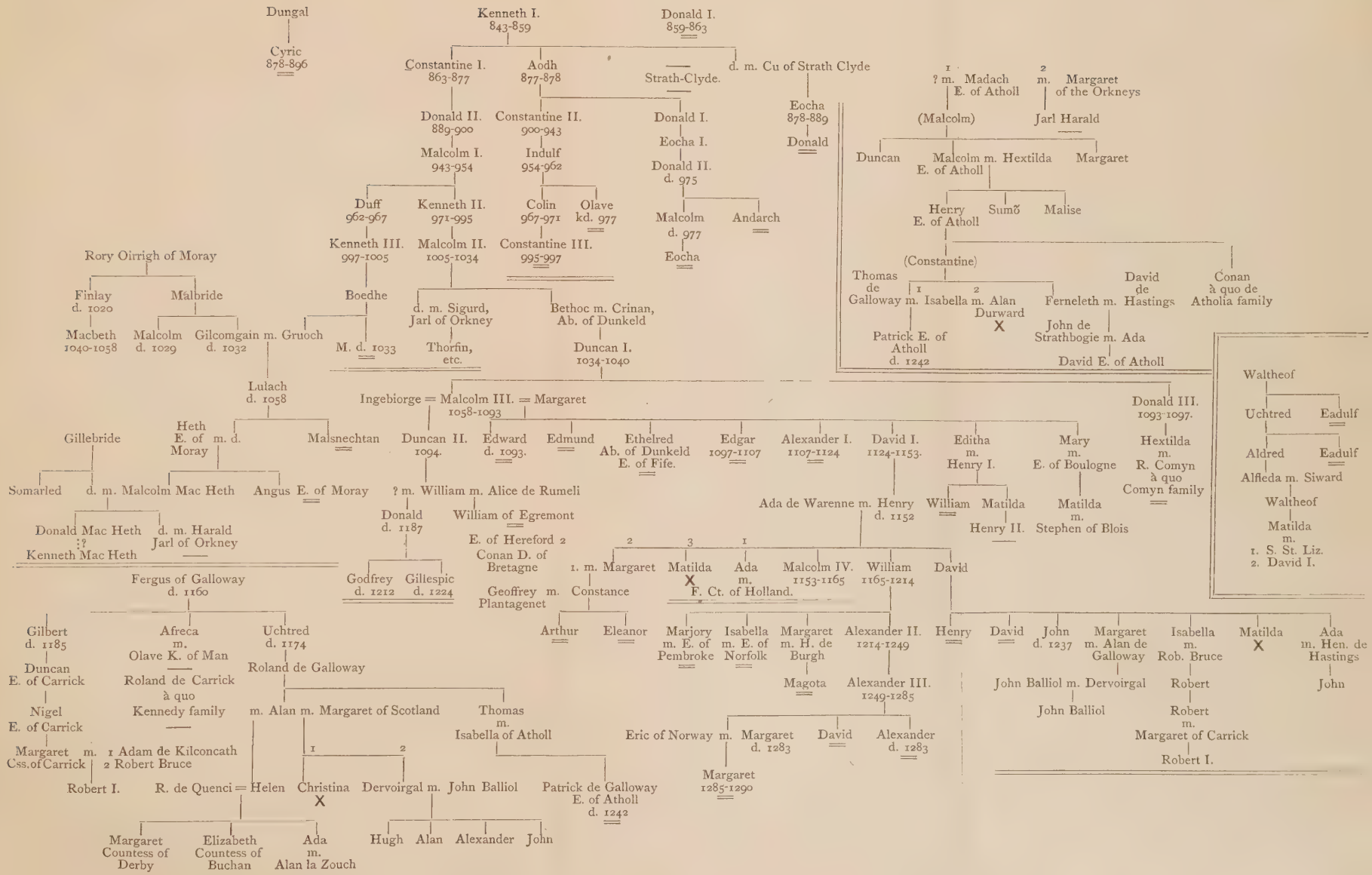
Kenneth Mac Alpin.

II.—KINGS OF DALRIADA.

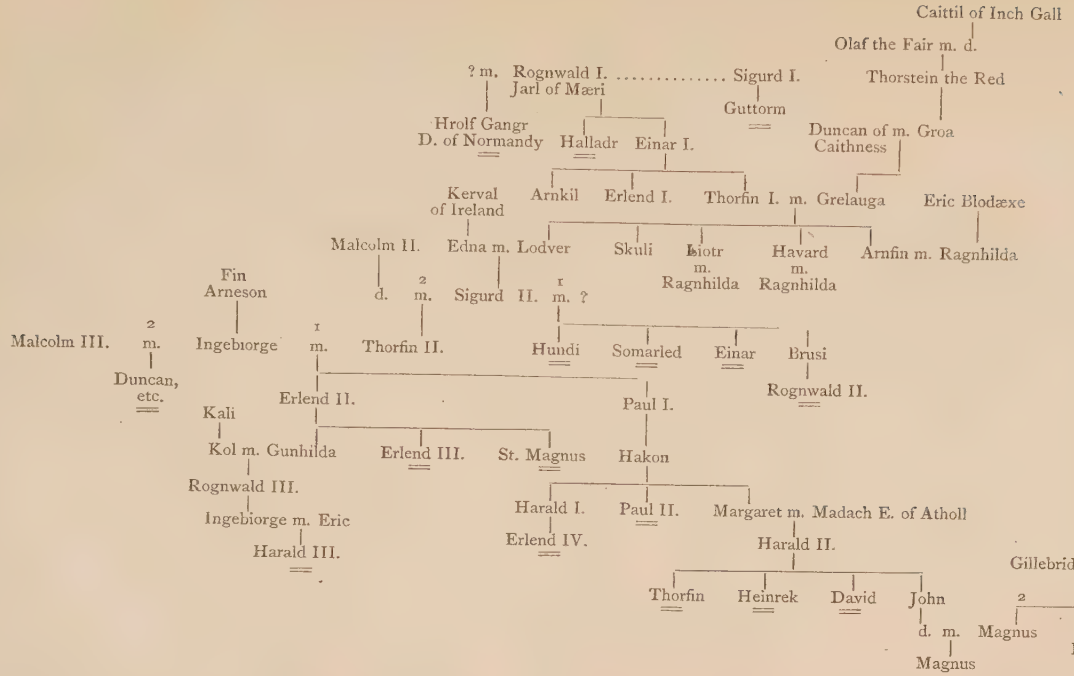
	IV.	V.	VI.	Duan.	Annalists.
Fergus Mor Mac Earca	3	3	3	27	K. of Dalriada, d. 502.
Domangart Mac Nissi	5	5	5	5	Do. 505.
Comgal Mac Domangart	32	24	34	24	Do. 538.
Gabhran Mac Domangart	22	22	22	2	Do. 560.
Conal Mac Comgal	14	14	14	15	Do. 574.
Aidan Mac Gabhran	34	34	24	24	Do. 606.
Eocha Buidhe Mac Aidan	16	16	16	70	Do. 629.
Conad Cer Mac Eocha	¼	¼	¼	¼	Do. 629.
Ferchar Mac Conad	16	16	16	16	
Donald Brec Mac Eocha	14	14	14	14	K. of Dalriada, d. 642.
Conal Crandomna Mac Eocha Dungal				10	d. 650.
Donald Duin				13	
Domangart Mac Donald Brec					K. of Dalriada, d. 673.
Malduin Mac Conal		16	16	17	d. 689.
Ferchar Fada	21	21	21	21	d. 697.
Eocha Mac Domangart	3	3	13	2	
Aincellach Mac Ferchar	1	1	1	1	Expelled, *An. Ult.* 698, d. 719, *Tigh.*
Duncha Beg					K. of Kintyre, d. 721.
Selvach Mac Ferchar					K. of Dalriada, resigned 723, d. 730.
Dungal Mac Selvach					Do. d. 733.
Eocha Mac Eocha	13	16	13		Do. d. 733.
Muredach Mac Aincellach	3	3	3	3	K. of Lorn, expelled 736.
Eogan Mac Muredach	3	3	3		
Aodh Fin Mac Eocha	30	30	30	30	K. of Dalriada, d. 778, *An. Ult.*
Fergus Mac Eocha	3	3	3		Do. 781, do.
Doncorcai					Do. 792, do.
Selvach Mac Eogan	24	24	24		
Donald				24	
Conal				2	
Conal				4	
Constantine				9	
Angus				9	
Aodh				4	
Eoganan Mac Aodh	30	30	30	13	
Dungal Mac Selvach	7	7	7	7	
Alpin Mac Eoganan	3	3	3	4	

Kenneth Mac Alpin.

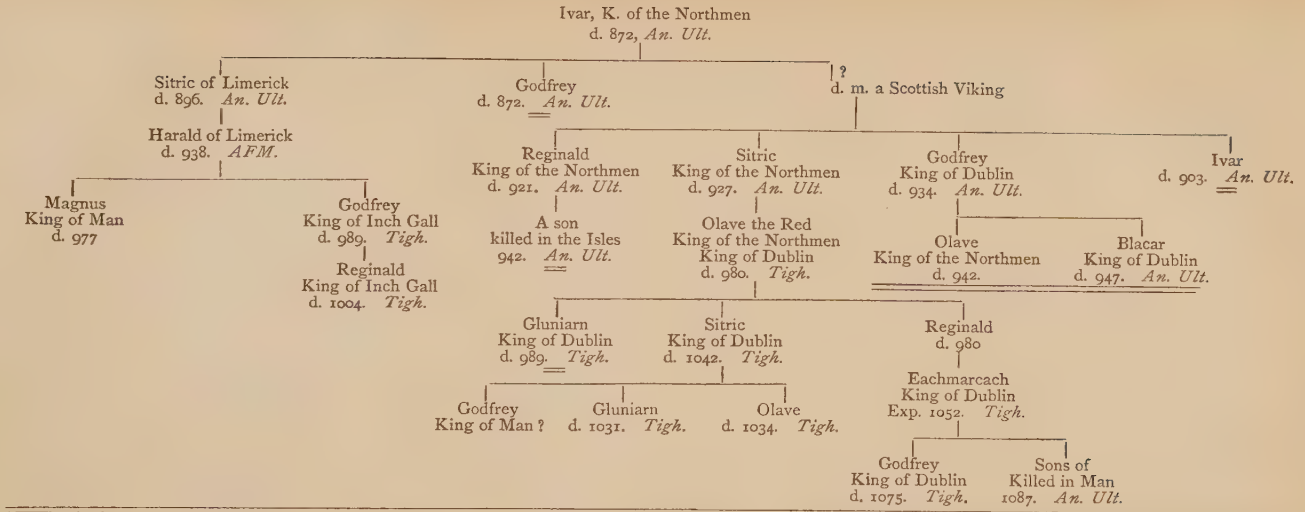
III.—KINGS OF SCOTLAND.



IV.—JARLS OF THE ORKNEYS.



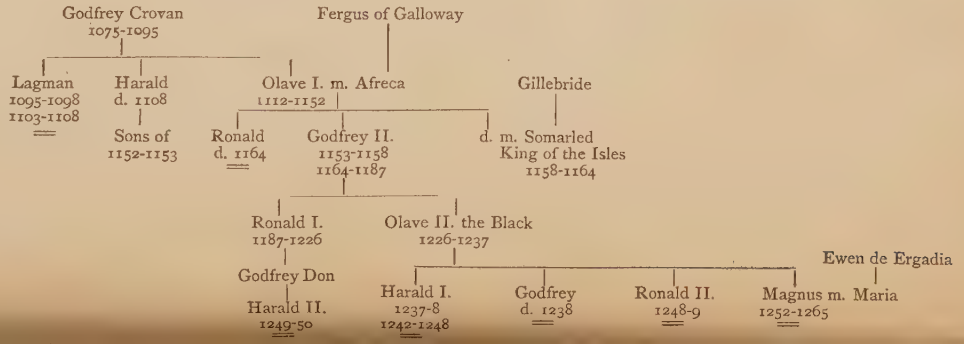
V.—THE HY IVAR.



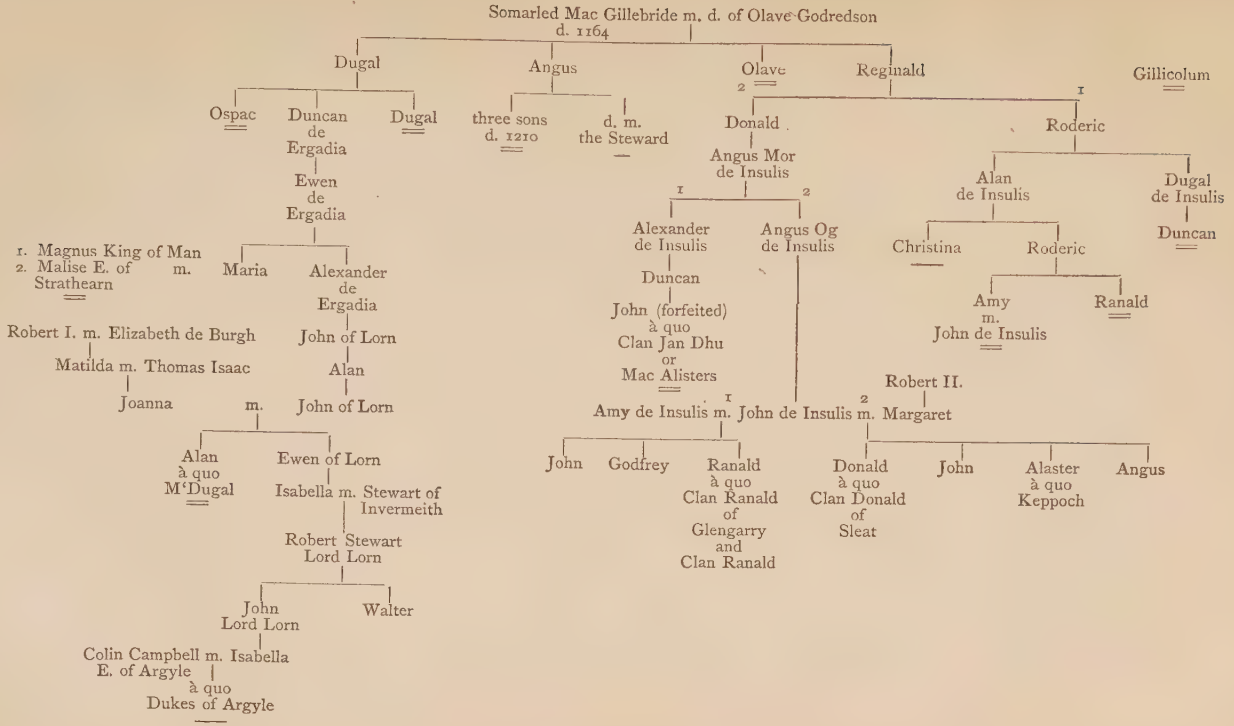
VI.—KINGS OF MAN.

Sigurd Magnusson 1098-1103
Donald O' Brien 1108-1111
Ingemund 1111-1112

Gospatrick Mac Erchar 1238-1240
Gilchrist Mac Erchar .. 1238-1242
Ivar 1275



VII.—LORDS OF THE OIRIR-GAEL.



II.

In the re-construction of a "puzzle" map out of a number of separate pieces the result might undoubtedly be obtained by shaping each piece to the requisite form at the expense of capes, promontories, and other inconvenient geographical features objectionably prominent; but whether the result thus obtained would be worth much in a geographical point of view may safely be doubted. So, by dint of elongating or curtailing certain reigns, by shortening the career of a king too full of years, and judiciously distributing his superfluity amongst less favoured princes, various great authorities have succeeded in constructing lists of the kings of Dalriada, whose reigns are made to fit neatly into the interval between the death of Fergus in 502 and the accession of Kenneth Mac Alpin, which is supposed to have happened in 836. As the historical accuracy of the result of their labours is somewhat questionable, I have contented myself with re-producing the sole authorities on which such a list can rest, as far as I am aware, leaving its re-construction to the ingenuity of others.

There is no difficulty until after the death of Donald Brec. According to Adamnan, the sons of Eocha Buidhe succeeded to their father,* and as the annalists introduce Donald in the usual order after his brother Conad, and a third brother, Conal Crandomna, appears to have followed Donald, the sixteen years' reign of their nephew Ferchar —a personage ignored by the annalists—who, according to the custom of the age, would not have succeeded before his uncles, must, if real, be misplaced. Malduin is the next king mentioned in the annals, but as they place his death in 689, a gap of thirty years is left which the Duan partially fills up with the reigns of Conal, Dungal, and Donald-duin, whilst at this point the annalists introduce a son of Donald Brec, Domangart, to whom they give the title of King of Dalriada. About this period

* *Adam. Vit. Col.*, l. 1, c. 9.

the words of Adamnan, and events narrated in the annals, confirm the supremacy of the tribe of Lorn, and the reign of Domangart's son Eocha, whose existence is testified by the annalists, though they do not call him King of Dalriada,* was probably, like that of Duncha Beg, over Kintyre, though his son seems to have regained the superiority over the whole principality. Only three kings of Dalriada appear in the annals after the death of Eocha Mac Eocha. Having never alluded to Selvach in his proper place, the Latin lists now make him useful as a grandson of his own nephew, whilst the Duan ignores him altogether, though they all resuscitate his son Dungal about a century after his death to fill up a gap before Alpin the father of Kenneth. The most famous chieftain of the house of Lorn, however, was far too prominent a character in his own generation to be thus summarily dealt with, he and his son Dungal having attracted the frequent notice of the annalists. The Latin lists are now totally at fault, and the Duan, which has only allowed for one reign of three years between 698 and 778, supplies a list of nine kings to fill the interval between the latter date—that of Aodh Fin's death—and the accession of Kenneth Mac Alpin, prominent amongst the number being Constantine and Angus, apparently the Pictish founders of Dunkeld and St. Andrews. Eoganan and Alpin, the immediate predecessors of Kenneth, are traditionary rather than historical personages, and it is exactly in this period of utter gloom and darkness that the foundation must have been laid of that aggrandizement which is supposed by the supporters of the "Scottish conquest" to have led to the utter extermination of the Pictish people by the insignificant tribe of Kintyre!

III.

The descent of the old Earls of Atholl from the royal family is unquestionable, the earldom appearing to have

* *Tigh.* 723. *An. Ult.* 722.

devolved, as usual, upon a junior branch, after the marriage of Crinan with Bethoc placed the Senior of the race upon the throne. Madach, the first-known earl, a contemporary of the sons of Malcolm Ceanmore, was their first cousin, according to the account of the Sagas;* but he could not have been a son of Donald Bane, as Hextilda, the heiress of that king, carried her claims to the Comyn family. Madach's connection with the royal family, therefore, must have been derived through a son, or daughter, of Duncan I., whom history has forgotten—a not uncommon circumstance, though it may be gathered from Wynton and other sources that there was a vague tradition of old that Duncan had three sons. Madach married Margaret of the Orkneys, their son Harald inheriting that earldom in right of his mother; but as he never raised any claim to the inheritance *of his father*, it is evident that Madach must have had another heir, by a previous marriage, to his own earldom. His immediate successor was Malcolm, who, between 1183-86, granted the church of Moulin to Dunfermlyn for the good of the souls of himself, his wife Hextilda, *and the kings, his ancestors, there resting*,† thus identifying his lineage with that of Madach, of whom, there seems no reason to doubt, he was the representative. Amongst the benefactors of Durham he is also found as "Malcolm, son of Malcolm, Earl of Atholl," with his wife Hextilda, daughter of Waltheof, his sons Sumõ and Henry (the Registry of Dunfermlyn adds another, Malise), his brother Duncan, his sister Margaret, and his grandson Constantine;‡ and he would accordingly appear to have been a grandson of Madach. The earldom passed, on his death, to his son Henry, upon whose death, in spite of these numerous male heirs, it went out of the old royal line. Henry had more than one son, but his eldest, perhaps Constantine, who predeceased him, left two daughters—the eldest, Isabella, carrying the earldom by her marriage with Thomas, a younger brother of Alan Fitz Roland, into the family of De Galloway. Thomas

* *Antiq. Celt. Scand.* p. 256-7.

† *Reg. Dunf.* 147.

‡ *Illust. Scot. Hist.* p. 17. *Reg. Dunf.* 148.

died in 1231, when his widow seems to have married Alan Durward, as the signature of Alan with the title of Earl of Atholl is attached to charters dated in 1233 and 1235; though, as his signature appears *without the title* in charters dated in and after 1236, it is probable that he only held the earldom in wardship during the minority of Patrick de Galloway.* Patrick was burnt to death by the Bissets in 1242, and his mother must have been dead before this date, for David de Hastings succeeded at once to the title in right of his wife, Fernileth, a younger sister of Isabella, holding the earldom until his own death in 1269.† John de Strathbogie is then found in possession, having married Ada, the daughter of David and Fernileth, the earldom remaining in his family, a branch of the house of Fife, until their forfeiture in the English wars. At the close of the thirteenth century an undoubted heir male of Earl Henry existed in the person of his grandson, "Ewen, son of Conan, son of Earl Henry," whose property is shortly afterwards found in the possession of the De Atholia family, subsequently known for a short time as Duncanson, and then finally as Robertson, or under the Gaelic title of Clan Donachie. The first who bears the name of De Atholia is Andrew, whom Mr. Skene (*Highlanders*) considers to have been a grandson of Ewen; whilst in the opinion of Colonel Robertson (*Comitatus de Atholia*) he married Ewen's heiress.

VII.

Somarled, lord of the Oirer-Gael, may be regarded as the founder of the predominance of the Scottish element amongst the Scoto-Norwegian population of the western coast and islands. The De Ergadia family, or Clan Dugal, were his senior representatives, holding his original possessions on the mainland, with originally a superiority over the Sudreys; whilst the Isles belonged to the family

* *Chron. Mel.* 1231. *Reg. Morav.* 128, 129. *Reg. Aberd.* 250, 251, 266, 37, 40, 114. *Reg. Vet. Arbr.* 102, 295. † *Chron. Mel. ad. an.*

of De Insulis, or Clan Ranald, of which the Clan Rory was the senior branch, the Clan Donald belonging originally to Isla. My reasons for not admitting a certain Somarled to share in the pedigree I have given in c. 14, p. 13, note. Duncan de Ergadia appears last in 1244; Ewen first, in 1248; and Alexander in 1284.* I see no reason to doubt that Alexander was a son of Ewen, for if Maria had been Ewen's heiress she would have carried the lordship of Argyle to Magnus of Man, and to Malise of Strathearn in succession; and there is no allusion to any other daughter of Ewen. Alexander was always a staunch partizan of Balliol, and in 1292 he bound himself to keep the peace with Alexander of the Isles, eldest son of Angus MacDonald of the Isles, and neither to move in any of his claims against him before the meeting of the Scottish Parliament, nor to countenance Ronald MacAlan, or Duncan MacDugal. His name often occurs in the *Fœdera*.† In 1305 he was driven out by Bruce, and died in England, according to Fordun, though Barbour says that he submitted to king Robert and remained in Scotland.‡ His name is found as late as the 13th of December 1307.§ His son, John de Ergadia, performed homage to Edward on the 17th of July 1292, and, as John of Lorn, was the well-known opponent of Bruce.‖ He fled to England in 1308, was appointed admiral of the English fleet directed against the western coasts of Scotland in 1311, and was at length captured by Bruce and confined, first in Dunbarton, and then in Lochleven, castles, where "I trow he maid tharin ending."¶ John de Ergadia, Lord of Lorn, grandson of the last named John, married Joanna, daughter and heiress of Thomas Isaac and Matilda, a daughter of Bruce by his second wife Elisabeth de Burgh. Glenlyon was conferred upon him and his wife by her uncle, David II., in 1369,

* *Mat. Paris*, pp. 437, 516. *Fœd.* vol. 1, p. 638.

† *Fœd.* vol. 1, pp. 731, 761, 767, 773, 781, 786, 787.

‡ *Fordun*, l. 12, c. 18. *Barbour*, bk. 7. l. 421.

§ *Fœd.* vol. 2, p. 22.

‖ *Fœd.* vol. 1, p. 773.

¶ *Barbour*, bk. 7, l. 426. bk. 10, 68. *Fœd.* vol. 2, p. 135.

he having previously received a grant of all the lands in Lorn which had belonged to Alexander of Lorn, probably about 1354, in which year he resigned all claim upon any lands, there or elsewhere, which had been granted to John of the Isles by the two last kings.* His grand-daughter Isabella, the heiress of his son Ewen, carried the lordship to Stewart of Invermeith, the descendants of his son Alan being represented by the MacDougals of Dunolly, the heirs-male of Somarled. Another Isabella, the eldest heiress of John Stewart, Lord of Lorn, who was the eldest grandson of the first Stewart of Lorn, brought it to Colin Campbell, whose descendants, the Dukes of Argyle, represent the senior branch of the race of Somarled in the female line. Alan MacRory was the head of the family of the Isles in 1284, and his heiress Christina was a firm friend of Bruce, assisting him after the battle of Methven.† He was the brother of Dugal whom Haco placed over the Sudreys, which was probably the ruin of his immediate family; but it is very doubtful if the Rory mentioned in Haco's expedition was their father. Alan's illegitimate son Roderic, Christina's brother, received many grants from Robert I., but was forfeited in 1325. In 1345 the lands of Moydart, Morar, Arisaig, and Knoydart in Garmoran, with the isles of Uist, Barra, Eig, and Rum, were restored to his son Ranald, by David II., and after the death of Ranald, in a feud with the Earl of Ross, passed, by his sister Amy, to John of the Isles, who granted them, with other lands in Lochaber and elsewhere, to Reginald, one of his sons by this marriage.‡ Alexander de Insulis Scotiæ, or De Yle, the eldest son of Angus MacDonald, who was the head of the junior branch of the family of De Insulis, originally possessing Isla and part of Cantyre, was probably the Alexander younger lord of the Isles of Bruce's grant.§ According to the MSS. genealogies in *Col. de reb. Alb.*, p. 59, he was the

* *Fordun*, l. 12, c. 23. *Robertson's Index*, 51, 27; 80, 141; 30, 2. *Hailes*, vol. 3, p. 386.

† *Fordun*, l. 11, c. 12.

‡ *Robertson's Index*, 28, 8; 100, 2; 136, 18.

§ *Robertson's Index*, 26, 23. *Fœd.* vol. 2, p. 76.

ancestor of the Clan Ian Dhu, or MacAlisters, who long retained their property in their original home of Cantyre, and would thus represent the senior branch of the Clan Donald; though they appear to have never recovered the forfeiture of his grandson "John, son of Duncan, son of Alexander of the Isles," whose lands were given by David II. to Alexander MacNaughton.* The gratitude of Robert Bruce for the great services of Alexander's younger brother, Angus Og, laid the foundation of the rise of the junior branch of the Clan Donald, whilst the marriage of the son of Angus, John of the Isles, with his kinswoman Amy, the heiress of the Clan Rory, still further increased their greatness. The senior representatives of this marriage are the MacDonells of Glengarry and Clan Ranald. John subsequently divorced Amy to marry Margaret Stewart, a daughter of Robert II., and the eldest son of this second marriage was Donald, whose union with Mary, sister of Alexander, Earl of Ross, brought that earldom to his son Alexander. Donald's family thus acquired a preponderance above all the rest of his race, and were long the most powerful subjects in the west of Scotland as earls of Ross and lords of the Isles, now represented by MacDonald of Sleat, Lord MacDonald.

* *Robertson's Index*, 100.

Appendix B.

THE CELT AND THE TEUTON.

In the present day it is usual to contrast the Celt and the Teuton as types of distinct and separate races, dissimilar in physical appearance, and differing in characteristics and in habits. The Celt is represented as a slight, dark, excitable personage, averse to agriculture and settled labour of every description, and clinging with tenacity to a wandering, uncivilised, and, as it is sometimes called, a "clannish" state of society, safely, but rather vaguely described as "patriarchal," an expression meaning, apparently, a state of anarchy into which farther inquiry is unnecessary. The Teuton, tall, fair, and grave, is set down as by nature formed for an agriculturist and a cultivator, a man of settled habits, attached to the soil, and bringing with him, from his native forests, an energetic and practical character, diametrically opposite to that of the fickle and lazy Celt. Without presuming to interfere with the ordinary use of the expressions "Celtic," and "Teutonic," to define certain types of character about as accurately as "Anglo-Saxon" represents the modern Englishman, "Frank" the inhabitant of the Bordelais, and "Goth" the Spaniard of the present day, I will only venture to observe, that for all purposes of practical inquiry it may be as well to be guided by the opinions formed by writers of the ancient world, in whose eyes the Celt and the Teuton in their original unamalgamated condition were in appearance and in habits so remarkably alike, as to suggest to Strabo that the meaning of the name of *German* was derived from the Latin *Germanus*

—"near of kin." Nor was the physical appearance of the Celt much altered about the opening of the fifth century, if we may judge from the description left by Ammianus of the tall Gallic matron defending her husband with her "large white arms," a description calling to mind the "milk-white Gauls" of the earlier days of Rome; for, in ancient times, the practical restrictions upon intermarriage with alien and inferior races preserved the characteristics of personal appearance in a manner all but incomprehensible to the ideas of the present day. Local situation, gradual intermixture with people of alien origin, and various other causes, not the least amongst the number being a certain removal beyond the influences of Imperial Rome, have contributed far more than "race" to the characteristics usually ascribed in modern times to the Celts—very much as if, because the Marshlander is often flat-footed, heavily and clumsily built, and frequently of a somewhat phlegmatic temperament, whilst a hollow instep, a light and well-shaped figure, with often a tendency to melancholy, generally marks the Mountaineer, it were inferred—from the Marshlander in western Europe being often a so-called Teuton, and the Mountaineer a so-called Celt—that the former race were invariably fat, flat-footed, and phlegmatic, and the Celt well-built, active, and melancholy. The true difference between the Celt and the Teuton in ancient times, a difference long discernible amongst the Celtic races, has scarcely been sufficiently attended to; whilst, by carefully separating as much as possible from the institutions of mediæval France and Germany all that is due to the influences of Imperial Rome, it will be found, in strict accordance with the testimony of classical authorities, that little difference could have existed between the earlier customs of both races, Celt as well as Teuton exhibiting the usual features distinguishing in ancient times a rural from an urban population.

The spirit of "Caste" pervaded the ancient world in a manner which it is scarcely possible in the present day to understand. At the root of every early false religion

appears to have lain a desire of dominion, the traditions of nearly every known people referring to a period in which a god-descended race is supposed to have ruled over less favoured mortals by "right of blood," forming, as it were, the connecting link in the chain between their own divine progenitors, and the earthly-born dependant classes who toiled for the benefit of their privileged lords. In the earliest and original phase of this system there was naturally only one Caste, exercising the functions of a sacerdotal and military noblesse, thus monopolizing both the spiritual and temporal sources of power, and owing their dominion, partly to the fear of the sword, and partly to a superstitious awe and reverence for their sacred character. The dominion thus monopolized originally by one ruling Caste was shared in the second phase between two, the once dominant class being confined exclusively to their sacred functions and privileges, whilst political power was the prerogative of the Military or "Royal" Caste. To internal revolution, or external conquest, may be traced the rise of this important change, the Eastern Empires of antiquity affording the best examples of each of the different phases in the early system of Caste. In the original polity of Ethiopia may be traced the first phase of the system, the rule of one dominant class, the puppet king whom at certain periods "the Gods awaited"—whom the leading nobles made away with at their own convenience—still having a parallel at the present day in the *Lama* of Thibet, and being distinctly recognisable in the ancient *Incas* of Peru, earthly representatives, like *Pi-Ra*, of the Sun, and surrounded by the virgins of that divinity, types also of the *Pallacidæ* of *Amun*.*

The second phase of the system can be detected under one form in Egypt, where the rise of the Warrior Caste, unknown at the date of the Exodus, when Moses was unaware of the existence of freehold lands in Egypt,

* *Diod. Sic.* l. 1, c. 47, l. 3, c. 5, 6. *Strabo*, l. 17, p. 816. Amongst the Egyptians in the historical era Apis seems to have played the part of the Ethiopian puppet.

except "the portion of the priests," may be traced to "internal revolution"—to the constant wars in which Egypt was engaged, either with the Nomads of the Arabian deserts, whose pastoral habits rendered everything connected with such a manner of life "an abomination to the Egyptians;" or with the Lybian tribes, the hated and despised "Berbers," whose name, still synonymous with *barbarism*, was applied by their opponents to all who spoke a foreign language. The continual necessity for a warlike and disciplined force must have fostered the rise of a body of trained soldiery, too formidable to be summarily dismissed to their original condition, too useful perhaps to the Pharaoh of the day for the purpose of internal or external conquest; and the jealousy with which the Military Caste was regarded by the priesthood may be easily detected in the attempts made by the priest-king Sethos, to deprive the Egyptian soldiery of their distinctive privileges.*

To "external conquest"—or rather, perhaps, to speak more correctly, to "conquest from without"—may be attributed the position of the Babylonian Chaldæans and the Magi. When Daniel and his companions were carried into captivity they were placed under the charge of the master of the eunuchs to be instructed "in the learning and the tongue of the Chaldæans;" but when these very Chaldæans were ushered into the presence of Nebuchadnezzar to assist in interpreting his dream, they addressed the monarch, not in their own dialect, but in "the Syrian tongue,"

* *Genesis*, c. 47, v. 20 to 26. *Herod.* l. 2, c. 141, 158, 168. *Diod. Sic.* l. 1, c. 73. The policy of Joseph is the earliest instance on record of "cancelling *odal-right*" and converting the "freeholders" into *Gafol-geldas*, the usual process of constructing a monarchy. The "cities" were evidently *Nomes*, described by Cyril as ἑκάστη πόλις, καὶ αἱ περιοικάδες αὐτῆς, καὶ αἱ ὑπ'αὐτῇ κῶμαι, the rural population being collected into the κῶμαι, and thus converted into *villani*, a "Villeinage," instead of a proprietary living on their own separate "freeholds." As no allusion is made to "the portion" of the Warrior Caste, which undoubtedly possessed freehold lands at a later period, the class must have arisen subsequently. The word rendered "priest" in our version might equally be translated "noble;" and in the earliest monuments the sacerdotal and not the royal title is attached to the names. *Ancient Egyp. Wilkinson*, vol. 1, c. 1, p. 16.

the language spoken at the Babylonian court; and they may probably be regarded as the representatives of the ancient Cushite nobles, known apparently as the *Akkad* —the *Cephenes* of the earlier Greeks—confined to their scientific and religious avocations by the Syrian conquerors.* Again, although the Magi are numbered by Herodotus amongst the Median tribes, Magus is a word of Chaldæan rather than of Arian origin, and typical of office rather than of race, *Rab-Mag*, "the master of the Magi," appearing amongst the officers in the train of the Babylonian Nebuchadnezzar. There were "cities of the Medes" under the power of the Assyrian Shalmanezar at a time when the Arian countrymen of Deioces led a rural life "in villages," or roamed as nomads over the boundless steppes, and in these cities dwelt the ancestry of the Magi; whilst, from the identity of the word *Kshayathiya* used by Darius upon the Behistan monument with *Kshatrya*, the appellation of the royal and military class amongst the early rulers of Hindostan, it may be concluded that the Arian Medes, and subsequently the Persians, held the same position as a royal, or dominant military class, amongst the population of the conquered empire, as the *Kshatryas* amongst the early people of Hindostan, and the Syrians of Assyria and Babylonia upon the banks of the Tigris and Euphrates.†

The prevalence of ruling tribes united by the tie of a common worship, and, generally, of a common origin from some divine progenitor, is also clearly traceable amongst the early people of the European continent. In the confederate cities of the Etrurians, that mysterious people who left such strong traces of their influence upon the religion and ceremonial of early Rome—where the spirits

* *Dan.* c. 1, v. 4; c. 2, v. 4. *Steph. Byzant. in voc.* Χαλδαιοι and Ιοπη. *Herod.* l. 7, c. 61. *Rawlinson's Herod. Essay* vi. sec. 23, note 9. *Essay* x. sec. 2, i. and bk. 1, c. 181, note 3.

† *Jerem.* c. 39, v. 3-13. 2 *Kings* c. 17, v. 6. *Tobit* c. 1, v. 14. The title of *Rab-Mag* appears on the earliest inscriptions, and Tiglath Pileser is described on the *Kileh Shergat* Cylinder as "he who has reduced all the Magian world." *Rawl. Herod. Essay* v. and vii. sec. 7, n. 3 and sec. 18, note 3.

of departed worthies watched over the fortunes of their descendants under the Etrurian name of *Lares*—a dominant noblesse, at once sacerdotal and military, ruled amongst a numerous and utterly dependant clientage. Closely resembling the nobles of Etruria, or the *Piromis* of ancient Egypt—the καλοὶ κἀγαθοι of gentle birth—the Attic *Eupatridæ* stand out as types of the dominant class that ruled the early Greeks, masters of the fortified citadel, members of the royal race, and sole officiators in all religious ceremonies. After "tyranny"—authority based on power rather than privilege—first broke down the barrier that hedged around the citizen-noble of ancient Greece, opening the way to the citadel to the rural population of the *Demes*, the prestige of religion still clung to the sacred race, and the god-descended families of the olden time retained their ancient privileges of alone celebrating the worship of their celestial and mythical progenitors.*

The bravest and most numerous of the Scythians, the opponents of the Persian invaders, were "the kings," or royal tribes, regarding the agricultural and nomad Scythians as their serfs, and united in the worship of Neptune, whilst Vesta was the tutelar goddess of the whole nation. "Kings" were the ruling tribe amongst their predecessors the Cimmerians; and "kings," or royal tribes, united in the worship of Mercury, from whom they claimed descent, and deeming it a mark of gentle birth to tattoo or paint the body, monopolized the lead amongst the Thracians. The presence of royal tribes is also noticed by Strabo amongst the Sarmatians, but nowhere are they more evident than amongst the ancestry of the Scandinavians and the Germans. According to the old

* *Dion. Hal.* l. 9, c. 5. *Liv.* l. 10, c. 16. *Etymol. Mag.* Εὐπατρίδαι. *Herod.* l. 2, c. 143. The union of the sacerdotal with the royal character amongst the Etrurians is shown in the remark of Livy, l. 5, c. 1, that the *King* of Veii was offended "quod suffragiis duodecim populorum *alius sacerdos* ei prælatus esset." *Pi-Romi*, "the man," appears to have been equivalent to the Teutonic *Wer*, "baron," or man of free and gentle birth. The esoteric secrets of the faith amongst the Greeks, known only to the sacred race in early days, became in later times "the mysteries," communicated to the outer world only by initiation.

traditions of Scandinavia, Odin, chief of the *Œsir*, or gods, once dwelt on earth with his twelve *Diar*, *Drottnr*, or *Godr*, Œsir also, but uniting to their heavenly characteristics the offices of priest and judge of the people; in direct descent from whom a god-born race long continued to exercise those functions amongst men, which their divine progenitors had claimed as their prerogative in *Asaland*. The title of *Drott*, borne by the gods and their immediate representatives, continued to be the sole title of authority until it was superseded by that of *king*, when the supreme authority became the peculiar appanage of some particular family or *kin*. A knowledge of Runes, incantations, and magic—the sacred science of the age—pre-eminence in war and horsemanship, and the exclusive possession of *Odal* lands, were the traditional characteristics of the ruling class, the *Jarls*, or *Eupatrids*, who thus centred in themselves the proprietorship of the land, and the attributes of priest and warrior.* Similar features are traceable amongst the ancient Germans, whose ruling class originally united in their persons the offices of priest, warrior, and judge. There may have been an early period when each chieftain was priest, judge, and leader of his own kindred and people, but, as clans and tribes united to form confederacies and states, some prominent chieftain was chosen to preside in their *Moots*, *Malls*, or public assemblies, to take the lead in religious ceremonies, or to marshal their

* *Herod.* l. 4, c. 11, 20, 59, 120; l. 5, c. 6, 7. *Strabo*, l. 7, p. 306. *Heimsk.* c. 1, *et seq.* *North. Antiq.* "*Rigs-mal*," p. 446. *Dryhtin*, *Drohtin*, *Druhtin*, and *Truhtin*, are all equivalents of the Scandinavian *Drott*. *Dryht*, *Leod*, *Eorl*, are often used for either "lords" or "people," for before the distinction between "noble" and "free" all the people were lords. The colonization of Iceland affords a good example of the early state of society in the north, each *Godr* ruling his followers by divine right, and forming an unit of the noble class who met in the *Herjar-Thing*—the assembly of the lords—upon an equal footing, until they agreed to elect for life one supreme *Godr*, the first step towards a monarchy had not Iceland been dependant on Denmark (*Wheaton Hist. North*, c. 3). In the Mosaic era, *Gods* and *Judges* seem to have been synonymous terms, possibly a relic of the sojourn of the Israelites under *Pi-Ra* "the sun." Compare *Exodus*, c. 11, v. 6; c. 22, v. 8, 28. In all these passages the word is rendered *Gods* in the Vulgate and in Luther's version. How far is the word *Godr* at the root of the name of the great *Gothic* confederacy?

forces in war. Each of these offices might be held by separate individuals, or united in the same person, and when permanently thus united, and transmitted as the heritage of a *Cyn* or kindred, the *Cyning*, the head or representative of the kindred, appears to have been distinguished as the ῥηξ, or *king* in the modern acceptation of the word. The earlier phase, however, of the system of Caste is alone traceable amongst the Teutons. No class was set apart for the exclusive exercise of the functions of a priesthood, the "priest of the state," in the days of Tacitus, only celebrating in public, and on solemn occasions, the ceremonies which every freeborn man was capable of performing in his private capacity, and no separate sacerdotal order is distinguishable amongst either Germans or Scandinavians.*

Such was not the case amongst the Gauls, who alone, of the populations of Western Europe, present an example of that mixed political system which may be traced in the great historical empires of the East. Half a century before the Christian era two classes are described by Cæsar as dividing between themselves the monopoly of dominion. The profession of arms was the sole occupation of the Equites, or military class, whilst the Druids, released from the dangers of war and the exaction of tribute, monopolizing the exclusive superintendence of every religious ceremony, whether public or private—resembling, in this point, the Magi amongst the ancient Persians—judges of every cause, and placing all who opposed their decrees under the ban of a withering excommunication; electing from their own body a Hiero-

* *Tac. Germ.* c. 7, 10. As the name of *Ætheling*, or *Odaller*, was gradually restricted to the *noble*, and in England, to the member of a royal race, so *Cyn*-ing or *Kon*-ung, originally meaning only "a child of the *Kin*," gradually became "the child" or representative of the *Kin*. The word amongst the Goths which seems to have answered to our ideas of a hereditary monarch was ῥηξ—*Ric* or *Righ*—οὐτα γὰρ σφῶν τους ἡγεμόνας οἱ βάρβαροι καλεῖν νενομίκασι (*Procop. de B. G.* l. 1, c. 1). As late as the close of the fourth century the Thervingian Goths, or Visigoths, were still under the rule of a *Judex*, when the Greutungs, or Ostragoths, obeyed an infant king—a ῥηξ—of the race of Hermanric, a change probably to be attributed to the empire established by the latter. (*Am. Marc.* l. 31, sec. 3.)

phant whose office lasted for life, and committing the mysteries of their faith to memory to preserve them from the knowledge of profane mortals, present every appearance of a sacred and once dominant noblesse confined to their sacerdotal avocations by the encroachments of a rival Caste. There may have been a time, indeed, when the Druids stood out as a separate race from the Equites, a band of foreign conquerors; or relinquished to their too powerful dependants a portion of that power which they were no longer able to monopolize; but, in the days of Cæsar, Gaul seems to have been long inhabited by a population of comparatively settled habits, her ruling classes were amalgamated and had become one united people, whilst her institutions bore evident tokens of having approached a period of decline. The Druids and the Equites had long ceased to be classes of different origin, the ranks of the former being recruited from amongst the best blood of the latter; but the barrier existing between the two Castes still remained intact; the prerogatives of each were still kept carefully distinct; and long after the introduction of Christianity amongst the Celtic races of Britain this division, or "balance of power," surely attributable in the first instance to the division of authority for so lengthened a period between two separate Castes, continued to be a fixed principle of policy, exemplified in the invariable separation of the judicial from the military functions of the officials appointed by the sovereign.*

The state of society amongst the Gauls in Cæsar's days, though differing in many respects from the description which the same authority has left of the Germans, bears not a few features of resemblance to the condition of the latter people at a later period; and as the institu-

* *Cæs. de B. G.* l. 6, c. 12, 13, 14. *Herod.* l. 1, c. 132. Divitiacus the Druid, with whom Cicero was personally acquainted, was brother of Dumnorix, one of the leading Equites amongst the Œdui (*Cæs. de B. G.* l. 1, c. 18. *Cic de Div.* l. 1, c. 41). The tradition amongst the Druids that the Gauls were partly indigenous, partly immigrants from distant islands, and from beyond the Rhine, seems to point to a recollection of some diversity of origin. (*Am. Marc.* l. 15, sec. 9).

tions of both people appeared far less antagonistic in the eyes of contemporary observers than they are generally represented by modern authorities, it is not improbable that somewhat similar causes may have produced in either case corresponding results; and that some light may be reflected upon the Gauls by a passing notice of the Germans. Two separate classes may be traced from the earliest period amongst the latter people, and indeed amongst all others, the *Ingenui* and the *Servi*, the Free-born and the Unfree; and even in the days of Tacitus the distinction between Noble and Free is evident in the existence of a *Plebs*, and in the mention of Nobiles and Ingenui; but no personal slaves were to be met with at this epoch, for the German knew of no use for them, his wife and family performing every household office, whilst in their manner of living there was no distinction between the master and the serf. The servile class was entirely agricultural, reminding Tacitus of the Roman *Colonus*, occupying their own homes, and supplying their lords with corn, cattle, and clothing, according to their wants, or, in other words, with the whole means of subsistence. Wherever this class existed they appear to have been known in early times as *Læts*, representing in theory, and very often in reality, a conquered population remaining on the land *on sufferance*, and deriving their name from the nature of their tenure, in contradistinction to that of the free proprietor by right of birth.* The early Germans, described by Tacitus, were essentially a non-agricultural

* To this day *Leasehold* is distinguished from *Freehold*. The name of *Læt* was probably derived from *Lætan*. (Ang. Sax.) *Latan*, (Low-Germ.) *Lazzan*, (High-Germ.) *Letan*, (Mæs-Goth.), all meaning "to let"—implying sufferance and permission, not right. Albert of Stade evidently refers to this meaning of the word when he adds to the account of Witikind (which he copies) "qui ab eis vivere sunt permissi *Litones* sunt *ab eodem vocabulo* nuncupati." The name seems to have been familiar to the Romans, the Λετοὺς ἔθνος Γαλατικὸν of Zosimus, alluding, apparently to the population of "the Germanies;" for at that time no "Germans" dwelt within the limits of the empire except "on sufferance," and it may have been in contradistinction to the *Lætic* or tributary confederacies within the Imperial provinces that the confederacy upon the opposite bank of the Rhine assumed the name of *Frank*. *Vide Appendix C.*

people; war was the main object of their existence, the source from which their princes and great nobles derived the means of *largesse;* and when the German warrior was not engaged in his sole occupation he passed his time in listless indolence, scorning the very idea of that agricultural occupation which, even in the later German laws, is stigmatized as "servile labour." In many respects they must have resembled an army quartered on the soil rather than a fixed and permanent population—hence the necessity for this servile class attached to the land—and in the description given by the Roman historian of the Chatti, which would probably have been applicable to most of the German communities of that age, "without home, land, or care of any description, wherever they come there they find their maintenance," may be detected, as it appeared to the eye of the Roman observer, the germ of that system of *Feorm, Refection,* or *Free-quarters,* which, long prevailing throughout the North, and plainly traceable in Saxon England, as well amongst the early Franks and Burgundians, existed until a much later period amongst the Welsh, the Scotch, and the Irish, under the various names of *Dovraeth, Sorning, Cosherie,* and *Coigny.* It would appear as if at this period the land, perhaps even the whole Lætic population, was the common property of the community, and that the free-born lords of the soil were allotted from year to year a certain portion for their maintenance, without caring for the possession of any particular spot as a permanent inheritance.*

* *Cæs. de B. G.* l. 4, c. 1; l. 6, c. 21. *Tac. Germ.* 15, 20, 25, 31. Once fixed in a settled *home* the German freeman gathered round him a body of *household* serfs, the "descripti per familiam ministri" whose absence astonished Tacitus, sometimes known amongst the Anglo-Saxons as *Esne* or *Metsunge-men*—*messing*-men, sharers of the board (*Anc. Laws, etc.* vol. 1, p. 436-37). The master was the *Hlaford,* the *loaf-giver;* the serf the *Hlafæta,* the *loaf-eater,* a word used occasionally for a household serf (*e.g. Leg. Æth.* 25). Is it necessary to point out the difference between such a state of society, in which the Freeman was a *Householder* surrounded by his *household,* and that in which "without home, land, or care," he was the "loaf-eater;" his serf the "loaf-giver?" In estimating Cæsar's account of the Germans, it must be recollected that he was the greatest soldier of his age, and

As there are no means of ascertaining the internal condition of the Germanic tribes between the age of

as such, a *practical* rather than a *theoretical* writer. He notices the lateness of the harvest in Gaul for the *practical* reason that it delayed his operations in that country (l. 1, c. 16), whilst the little attention paid by the Germans to agriculture was *practically* forced upon his notice by the *absolute want of corn*, which obliged him to curtail his campaign across the Rhine (l. 6, c. 28). All his inquiries about the Germans were dictated originally with the probable view of the *practical* contingency of a campaign in their country, and to judge from the example of all really great commanders, would have been based upon the surest information he could obtain—not from the Gauls but —from *the Germans serving in his own army* (l. 7, c. 65). I cannot, therefore, agree in ignoring or limiting the testimony of the great soldier because it reveals a state of society little in accordance with the ideas current nineteen centuries after he wrote. Strabo speaks still more strongly than Cæsar of the unsettled habits of the Germans, whose houses, or rather huts, were run up in a day, and of their total neglect of agriculture, comparing them in these points with the Nomads, whom they also resembled in moving about with their families in waggons and cars (l. 7, p. 291). Of several passages in Tacitus confirming Cæsar's account, I will select only two. "Quantò plus propinquorum, quò major adfinium numerus, tantò gratiosior senectus: *nec ulla orbitatis pretia.*" (*Germ.* 20). The "orbitatis pretium" can only mean the *accumulation of property* resulting from a want of kindred in the settled state of society, and under the "fixity of tenure" with which Tacitus was familiar, where a numerous body of relations would have been regarded as any thing but an advantage. Amongst the Germans, on the contrary, under the system described by Cæsar, the more numerous the *kin*, the greater was the extent of land allotted to them. Again "agri pro numero cultorum ab universis per vices occupantur, quos mox inter se secundum dignationem partiuntur," (*Germ.* 26), "the *cultivable* lands—*i. e.* neither wood nor waste—according to the number of *the cultivators* are occupied in turns by the whole body, and then allotted *amongst themselves* according to rank;" a passage, which, with its complement "arva per annos mutant et superest ager," "they change the corn-land every year and there is cultivable land to spare,"—it is impossible to reconcile with a settled state of society and hereditary property in land. To every one of the *cultores*—the *coloni* or *Læts*, each with his separate "sedes et penates"—a portion of tillage-land was assigned every year, so that the whole cultivable land was occupied "in turn," yet from its vast extent there was always plenty to spare, *i. e.* that had lain fallow long enough to be again ready for a corn crop. The *allotment* then proceeded, "inter se secundum dignationem," amongst the *freemen* according to their rank. The "hereditary right" of the freeman in those days must have been his claim to an allotment, *equal*, in the state of society described by Cæsar; *unequal* in that familiar to Tacitus. The possession or transmission of fixed property in land is totally irreconcilable with any of these passages. The remark of Tacitus, "delegata domus et Penatium et agrorum cura, fœminis, senibusque, et infirmissimo cuique ex familiâ (*Germ.* 15), defines the *cultivating* class, when the freeman was dependant on his own resources—when he had no *Læts*.

Tacitus, and that era in which they appear as the dominant population throughout the Western Empire, it would be impossible to determine either the period at which they first acquired the idea of "fixity of tenure," or the exact form under which this change was first brought about. That their principles regulating landed tenure were not uniformly the same, even at a very early period, may be gathered from the different accounts left by Cæsar and Tacitus of the state of society with which each authority appears to have been most familiar—the equal distribution of the land through which "suas quisque opes cum potentissimis æquari videat," as well as the independent rule of every chieftain, or *princeps*, over his own kindred described by the former, contrasting with the unequal allotment of land according to rank, and the annual progress of the chosen *princeps* to administer justice, accompanied by his hundred *Comites*, with which Tacitus was familiar; these very Comites, again, forming a warlike class, differing essentially from the population, half warlike, half agricultural, composing, according to Cæsar, the formidable confederacy of the Suevi. As the germ of that state of society, which may be called, for the sake of distinction, "the Community," is traceable in the pages of Cæsar, its leading features being equality in the partition of the land; little distinction of ranks, and that solely grounded upon "pure blood;" the annual or occasional choice of magistrates and leaders by the whole community, or its delegates; and the application of "the common land" to the sole purposes of the same community—so, in the description left by Tacitus, may be detected the principles out of which arose the gradual development of "the kingdom," or *Riki*, characterised by an unequal distribution of land, and by inequality in rank, dependant latterly on "royal grace;" by the substitution of royal in the place of elective officials and magistrates; and by the transfer of all the rights of the community to the king. It is no "legal fiction" to describe the whole extent of *the kingdom* as, in a certain sense, and at a certain period, the property of the head of the lineage;

but wherever this state of society existed, the *duties*, as well as the rights of the community, had originally devolved upon the *Cyning*, the whole of the *Leudes* or people being equally entitled to the support of the actual or nominal head of their race. The nearest approach to the old "Community" might have been still seen, at the opening of the present century, in certain parts of Friesland, whilst the earliest historical example of the development of the principle of "royalty" is traceable, perhaps, in the ancient laws of the Burgundians.*

A threefold division of the land appears to have been very generally prevalent after a conquest, two portions, apparently, being allotted amongst the freeholders, and a third remaining the peculiar property of the king. The principle may be traced in the intended policy of Ariovistus, when he contemplated a permanent occupation of the lands of the Sequani; it was subsequently carried out in Africa when Genseric portioned out his conquests amongst the Vandals; and it was introduced into the Roman provinces, under a slightly different aspect, both by the Burgundians from the depths of the Black Forest and the vicinity of the Alamanni, and by the Goths after their westward progress from the southern banks of the Danube. It implies the conquest of a *settled* population, carried out apparently on the principle of "the kingdom," for it is never found, that I am aware of, in connection with "the community;" but it cannot be considered as essentially Germanic, for vestiges of a similar threefold division of the land are dimly traceable in Ireland.†

* *Vide Appendix D.*

† Gibbon, *Decline and Fall*, c. 38, has noticed this apparent coincidence between the intended settlement of Ariovistus and the actual conquests of the Burgundians and Visigoths. Called in to the assistance of the Sequani, Ariovistus crossed the Rhine with 15,000 Germans, and served for pay, which, as it was probably the "Epulæ et largi apparatus" alluded to by Tacitus (*Germ.* 14), and as he remained for fourteen years, must have taken the form of a permanent charge upon *a third* of the lands of the Sequani, "sedes ab ipsis concessas." So, when Odoacer and Theodoric, λόγῳ μὲν τύραννος ἔργῳ δὲ βασιλέυς, became "allies" of the Roman Empire, each was in turn content with *a third* of the Italian lands. After the victory of Amagetobria, Ariovistus exacted hostages and tribute from the Sequani, "jure belli," demanding *another third*

Whatever permanent conquests may have been achieved by the Germans before the commencement of the fifth century must have been gained at the expense of people little, if at all, in advance of themselves; but after that period they appear as a military class dominant amongst a comparatively dense population, and upon the vestiges of an elaborate though declining civilization, and not without a certain resemblance in their position to the Aramean and Arian races of the east, who established their rule over the more settled and civilized population of the earliest empires of antiquity. Two separate and distinct races, living under two separate and distinct systems of law, can long be distinguished—on one side the Teutonic invaders, on the other the old provincial population, comprised under the general designation of *Roman*, or *Wealh*. Whatever position the Roman held, whether he was ground down to the condition of a servile Læt, as in the earlier conquests of the Franks and Anglo-Saxons, or whether he preserved in some degree his rank and station, together with a certain portion of his property, as a tributary, under the milder rule of the Burgundians and the Visigoths, all connection with his race was deemed abhorrent, and prohibited by the sternest enactments of his conquerors. One career, however, remained open to

of their land, which, from this time, he called *his own*—"suam provinciam;" and when the Germans are found as masters in the Roman provinces, instead of allies, they are also in possession of "*another third*." I cannot imagine such coincidences entirely fortuitous. The proceedings of Genseric bear the closest resemblance to those of Ariovistus, two-thirds of the land being absolutely confiscated amongst the Vandals and their royal family, and the earlier proprietors ejected or enslaved, whilst tribute was levied upon the possessors of the remaining third, which must have answered to a "Folkland," either to provide for the expansion of the people, or for the maintenance of the royal *Gasinds*. Such was probably the older form of a conquest, entailing confiscation and servitude upon the proprietors allotted out amongst the individual conquerors, and taxation and servitude upon all reserved as public or royal property. The principle of the Gothic and Burgundian conquests was the same, apparently, but their practice was different, the Roman proprietors remaining undisturbed, but mulcted of two-thirds of their property for the benefit of the individual, and taxed upon the remainder for the benefit of the king and state. *Cæs. de B. G.*, l. 1, c. 31, 36, 44. *Procop. de B. G.*, l. 1, c. 1. *de B. V.*, l. 1, c. 5, 17.

him, which, in northern Gaul especially, was long confined to the conquered race—the church—for, as amongst the Franks, the freeborn *Leudes* for many generations formed the preponderating force of the army, so for upwards of a century and a half the descendants of the old provincial population continued to monopolize the church, living under Roman law, and latterly authorized to grant a qualified enfranchisement by conferring the once proud title of "Roman citizen," which now merely ranked its recipient on a level with "Læts of the highest class!" No especial privileges were conceded after the conversion of Chlovis to members of the ecclesiastical order, who were valued according to their original position amongst the Laity, whether Free, Lætic, or Servile, until, through the connection of the Frank kings with Italy and Rome, they were raised to the footing of the highest nobles; and henceforth the subdeacon was placed upon an equality with the count of servile origin, the priest with the freeborn Frankish *Graf*. From this period the Frankish element began to preponderate amongst the clergy, and, before long, bishops are occasionally found attesting their presence at a council, not by subscribing their signature, but by simply affixing their *mark*.*

* *Vide Appendix E.* The progress of some of these changes may be traced in the Visigothic laws. An edict of Reciswind, between 653 and 672, repealed the old law prohibiting intermarriage between Goth and Roman; but in a law of his successor Wamba, dated 673, summoning every one "sive nobilis, sive mediocris, sive vilior persona"—the three classes of *Ingenui*—to attend in case of "scandalum infra fines Hispaniæ," or civil war, the following words, "nam justum est, ut qui nobilitatem generis sui, et statum patriæ, quod *priscæ gentis* adquisivit utilitas . . . vindicare nequivit . . . feriatur," seem to limit the expected force to the *prisca gens*, the old Gothic race. Egiga, the next king, orders every one "seu sit Gothus sive Romanus, necnon ingenuus quisque vel etiam manumissus, seu etiam quislibet ex servis fiscalibus," to attend with one-tenth of his serfs, whom he was to present properly armed, "Principi, Duci, vel Comiti suo." From this period, therefore, regular military service appears to have been entailed on all alike. The arms entrusted to the serfs were returned at the end of "the hosting," and thus known as the *Heregeat*, or *War-loan*. So the arms given to the *Gasind* by his patron were looked upon as a *loan*, to be returned at the close of his "war-service," which, in his case, generally lasted till his death. Hence the origin of the *Heriot*. To one member of the servile class alone were arms at this period permanently entrusted—to the *Carni-*

There are no traces of any one supreme and hereditary race supplying an equivalent to the Gothic ἐήξ in the earlier conquests of the Franks, which were carried out apparently by separate "communities," each under their respective *Cynings*, though frequently united under one of these Cynings as a *Heretoga;* and the conquered lands were "roped out" in allotments amongst the conquerors, the well known story of the Vase of Soissons testifying to the strict equality existing even in the days of Chlovis.* But from the date of that king's supremacy the Frank "communities" became absorbed in "a kingdom," for Chlovis was essentially a ἐήξ, and all subsequent additions to the territories and dominion of the Franks were annexed on a different footing from the strict partition of the "community." In Neustria—perhaps the *newest Riki*, the latest acquisition of the Franks at the period when the name was first acquired—the descendants of the old Armorican population and of the Roman soldiery, who had maintained their independence, against the pretensions alike of Frank and Roman, from the commencement to the close of the fifth century, when they came to terms with Chlovis, appear to have been annexed to his kingdom as free tributaries, or dependants of the Crown; a proceeding which must have added immensely to his power as king, whilst it preserved the Neustrasian proprietors from undergoing the same fate as the rest of their kindred in Northern Gaul. Nor indeed does it appear as if in the other provinces beyond the Loire, which were subsequently annexed to the Frankish monarchy, the old provincial proprietary were reduced to a *Lætic* footing, and replaced by Frank landowners, as in the actual *Salic* territory, but

fex, or executioner; far too obnoxious a character, probably, amongst his fellows to be suspected of treason against his lord. *Leg. Vis.*, l. 3, *tit.* 1, sec. 1; l. 5, *t.* 7, sec. 20; l. 9, *t.* 2, sec. 8, 9. (*Lind.*)

* *Greg. Tur. Hist. Ec.*, l. 2, c. 27. To mark out the allotments by *a rope* appears to have been an ancient custom, and it is said of Rollo "illam terram fidelibus *funiculos* divisit." Hence is sometimes derived the Sussex *Rape*, the Jutish *Hrepp*. Perhaps the *Hyde* may have once meant the portion measured out in a similar manner by means of an *ox-hide* used as a rope. The Welsh *maenawl* was the district "within stones."

they seem to have existed as a similar free and dependant class, occupying a place below the Burgundian, Alaman, or Bavarian—except where they were raised to the rank of "royal officials," or enjoyed the position of a "Conviva Regis"—and still further beneath the free-born Frank, and his equivalent the "Barbarus living by Salic law," but on a footing with the royal or ecclesiastical vassal, and the Tabellarius—the *Læt*, or serf, freed by charter—in short, with all the classes enjoying the qualified freedom of "Roman citizenship." A similar ingredient is observable amongst the Anglo-Saxon population, after the westerly districts beyond the earlier *Mark*—in some of which the *Sætta* is still distinguishable—were annexed to the greater kingdoms which had gradually absorbed the lesser, the *Wealh Syxhyndman*, and *Gafolgelda*, amongst the *Gewissi*—the Loegrians who became Saxons—exhibiting many features in common with the free Roman proprietary amongst the Franks.*

From the epoch of this change from "the community" to "the kingdom" may be dated a gradual decline in the condition of the *Leudes*. The means of expansion for the class of lesser freeholders no longer existed, for the common land, now *Fiscal* rather than *Folk*-land, was no longer "roped out" according to their exigencies, but only leased or granted out by the king to those who became his *Antrustions*, who, relinquishing all their former ties and rights, bound themselves to the royal service. The principle

* *Vide Appendix E.* "Immunity from exaction" originally marked the *Ingenuus*, "limited exaction," the free dependant or tributary, whilst "unlimited exaction" was the lot of the serf. No serf could purchase his freedom with his own savings, for "all that he had was his lord's," such was the Bavarian law (*Tit.* 15, sec. 7), and the principle was common to all. As the imposition of an additional tax of an *amphora* of wine from every *arpent*, upon the "possessores de propriâ terrâ," caused a revolt in the Limousin—in a province to the south of the Loire—a free proprietary must have existed in the time of Chilperic in that quarter, neither exempt from taxation, nor liable to "unlimited exaction" (*Greg. Tur. Hist. Ec.*, l. 5, c. 28). This is additionally shown by *Romans* as well as Franks holding in the seventh century by *Leudisamium*—the fealty of the *Allodial* proprietor tendered in open *Mall* (*Leud-sammen* "the gathering of the *Leudes*), opposed to *Litimonium* (*Læt-mund*, "the protection afforded to the *Læt*"), originally confined to the Lætic classes (*Form. Marc.*, l. 1, 40).

of nobility changed also with the principle of proprietorship, and as the landholders gradually became a class entirely dependant on the king, so the earlier "Eorlcundman," the noble of pure blood and descent, "perfect in his generations," was equally replaced by the noble by service, "ingenita libertas *gratiæ dono* fit nobilis" becoming the recognised principle of *noblesse*.* As long as the *Leud* was a warrior, as long as he dwelt at free-quarters amongst a dependant population supplying all his wants, and was enabled to maintain this footing by an annual or occasional redistribution of the land, or by winning a fresh allotment beyond the older *Mark*, he retained a position of a certain importance and weight in "the community," and commensurate with the dignity of "pure blood." But when the "common land" was no longer available to meet the expansion of the class to which he belonged, and, after a lapse of a few generations of "fixity of tenure" within a limited boundary, he necessarily became the inheritor of only a fraction of the ancestral allotment; when, without the resource of a neighbouring frontier to be crossed, or of an annual "hosting" in which to draw his sword, he was reduced to betake himself to "servile labour," he rapidly exchanged his former condition of "a soldier" for that of an agricultural peasant, "a *roturier*," without the advantage derived by "the Villeinage" from the support and protection of a superior. The continued existence of a free peasant proprietary was incompatible with the state of society of which he was a member, and the laws directed against oppressing and selling into slavery the lesser freeholders, with the permission granted to that class of parting with their inheritances on the plea of necessity or starvation, point to their changed position during the period when the earlier tenure of land was fast giving place to that system of "*Trust*" and dependance on a superior—the *Hlaford-Socn* of the Anglo-Saxons—which, in course of time, replaced the lesser Allodial proprietors by a Feudal tenantry and a "Villeinage."†

* *Vide Appendix F.*

† This process amongst the Franks began as early as the reigns of the immediate successors of Chlovis, when

The situation in which the Gallic *Plebs* appears in the pages of Cæsar bears many features of resemblance to the condition in which the Germanic *Leudes* must have been placed during various periods of this transition. Every attempt at perpetuating "royalty," in its later acceptation, amongst the Gauls had hitherto been unsuccessful, but not a vestige of "the community," or of its equal rights, can be detected in that state of society in which the upper classes monopolized the whole management and direction of affairs, whilst amongst the mass of the people each relied on his immediate patron to protect him from injustice and oppression; a situation far more resembling the earlier condition of the dependant *Folger* "in plegio domini," than that of an independent member of a free *Mægborh*. Without a vestige of political power, worn down by the pressure of debt, the exactions of the state, and the tyranny of the nobles, many of the *Ingenui* had exchanged a precarious liberty for a partial or complete state of servitude, whilst others formed that numerous class of "*Ambacti et clientes*," answering to the *Gasinds* or *Comites* of the Germans, with whom every Gallic nobleman was accustomed to surround himself. But a free class resigning its liberties cannot have been a permanent institution, and it may be inferred, even from the description of Cæsar, that there must have been a period when the condition of the Gallic Plebs had been widely different, exhibiting many more of the features characterising the free community—when, in short, the *Ingenui*, like the early German Leudes, formed the bulk of a free and independent class, of which the leading members were the *Equites*.*

"Audo judex cum Mummulo præfecto multos de Francis qui tempore Childeberti regis senioris *ingenui* fuerant *publico tributo subegit*" (*Greg. Tur. Hist. Ec.*, l. 7, c. 15). At the era of the Norman Conquest the *Socman*, in his purest form the equivalent of the *Franc-alleu-Roturier*, and representative of the lesser allodial proprietor, was confined to Danelage—the tenure of the *Thane*, i. e., *military tenure*, prevailing throughout Wessex and Mercia, all who were not *Thanes* being reckoned amongst the *Villeinage*.

* *Cæs. de B. G.*, l. 1, c. 4, l. 6, c. 11, 12, 14. He arranges the followers of the Gallic Magnates under the heads of Obærati, Clientes, and Ambacti. The first were working out their debts in bond-service, an instance of this

As it is possible to trace a parallel between the condition of the Gallic Plebs in the days of Cæsar, and that of the Germanic Leudes during certain periods of transition, similar though not permanent features of resemblance may once also have existed between the upper classes of the same people. The Pagan Frank and the Christian Roman stood out for generations as members of distinct and separate races, without however much appearance of equality, before *Frank* became a simple term for *Freeholder*, and the difference of origin was forgotten; but had the Gothic or Burgundian noble been originally a heathen, the situation in which he would have long been placed, side by side with the Roman, his equal in many

description occurring in *Adam. Vit. Columb.*, l. 2, c. 39, *Reeves*, where the wealthier kinsman, having paid the *Eric*, or *Wergild*, for his relative, commanded his services in return until he received an equivalent, when he restored him his freedom by "loosing his belt." The *clientes* were probably lesser clans or families, free but dependant; the *Ambacti*, answering to the *Gasinds* or Comites of the Germans, the θεράποντας ἐλευθέρους ἐκ τῶν πενήτων of *Diod. Sic.*, l. 5, c. 29. The *Ambactus* was the Irish *Amas*, the military follower, often met with in the Irish annalists. Thus *Tighernach*, 722, records the death of Fergal at the battle of Allen with 200 *Kings* and 160 *Amsaib*, a word which he elsewhere renders *Satellites*—soldiers or freemen dedicated to the service of a patron. In his version of the New Testament Ulphilas rendered οἱ δοῦλοι καὶ οἱ ὑπηρέται—"the servants and officers"—by "scalcos jah *ambahtos;*" the centurion by Wald*ambahts;* and "the days of ministration" by "dagos *andbahteis.*" It appears, therefore, to have implied military or honourable service, not serfdom—an *ambassador* is an *ambactus Regis*—and under the various forms of *Ampt*, *Æmbete*, *Embede*, *Embætta*, has penetrated in this sense into all the northern languages, *at embætta* being used to this day in Iceland to mean "service at the altar." In a similar sense *Ammat* and *Embiht* are found in Lappish, *Ammatti* in Finnish, and *Anmatts* in Lithuanian; but the Lappish *Ammas* or *Abmas* must not be confounded with the Irish *Amas*, the Lappish word meaning "an alien," or "stranger," in contradistinction to *Sabme* and *Sabmelats*, a "Lapp"—*abme* being in Lappish the sign of negation. *Ambactus*, in the time of Ennius, was the word used by the Gauls for *servus*, and much learning has been expended by various commentators on Festus to prove it a *Latin*, not a *Celtic* word, and derived from *ambagere*, passing from the Latin to the Gauls and Germans. A word in such familiar use from the time of Ennius to the fifth century of the Christian era, as to pass from the Latin into the language of the German invaders, ought surely to be met with occasionally in classical authors. It is not, however; whilst its occurrence in Ulphilas, who translated the scriptures for the Goths before their westward movement, and its appearance in Iceland, far from *Latin* influences, hardly favour the theory of its *Latin* origin.

respects, but alien in religion and in race, would have borne a far more striking resemblance to the divided rule of the Equites and Druids, before they blended into separate classes of the same race.* More than sufficient time had elapsed, before the loss of their independence, to admit of these and many other changes amongst the Gauls. Four centuries before the Christian era, the Gauls had already reached that phase in their social state which their neigh-

* "Nullam causam, absente altero judice, vel Romanus comes vel Burgundio judicare præsumet," says the *Leg. Burg. Præf.* (*Vide* also *Tit.* 2, 10, 15, 16.) This joint jurisdiction in every court certainly resembles the joint supremacy of a *Maer* and *Cynghellwr* over every Cymric commot. So may a *Druid* and an *Eques* have once sat side by side, before the amalgamation of the two different races led to the division of the privileges of noblesse between two separate classes, instead of two separate people. That the Celts were apt to coalesce may be gathered from the examples of the *Celt-Iberians*, the *Celt-Illyrian* Japodes, and the *Celto-Ligurian* Salyes; and even at the present day the Celt blends more readily with another race than the Teuton. Who were these Burgundians? The solitary notice of Pliny enumerating the *Burgundiones* amongst the Vandals in that quarter in which *Borgund-holm* may mark a locality they once occupied—just as in the old name of the Oder, the *Guttalus*, may perhaps be traced a *Gotha-Elf* or "river of the Goths,"—is all that is known of the *name* before the *people* emerge into the notice of later historians in the depths of the Black Forest, and in the vicinity of the Alamanni. (*Plin. Nat. Hist.*, l. 4, c. 14, *Am. Marc.*, l. 28, c. 5.) They affected a Roman origin, in other words, an extraction different from that of their Suevian neighbours, and their political constitution was peculiar, denoting that separation of the priesthood belonging to the Celtic rather than to the Germanic system. Their chief priest or *Sinistus* held his office for life, as irremovable as the Hierophant or Arch Druid amongst the Gauls; whilst their leading princes or *Hendini* were removable at will, or, in other words, elective. It would be vain to seek a meaning for these titles in the German languages, but if the Saxon *Ealdorman* were translated into modern Welch, it would be exactly rendered by *Hen-dyn;* and as *Tanistus* is the Latinized form of *Tanaîste*, the second or next in succession, so *Sinistus* may have been nothing more than the *Senaiste* or *Senior* priest of the race. In alluding to the conversion of this people, Socrates (*Hist. Ec.*, l. 7, c. 30) remarks that every Burgundian was—*a carpenter*. Amongst the Gael, *Saor* was the word used both for *ingenuus*, free or noble, as opposed to *Daor* servile, and for—*a carpenter*. Had the informant of the historian mistaken between the noble and the carpenter—were they all *freemen*, not all carpenters—or is it simply a singular coincidence arising from the location of both Gael and Burgundian amongst the woods, thus rendering the *worker in wood* the gentleman, the agricultural labourer the serf? Be this as it may, there appears enough in the account of Ammianus to make it probable that there was a considerable admixture of the Celtic element in the race.

bours were approaching in the days of Cæsar, though the intervention of the Roman Empire retarded the irruption of the Germans for a considerable length of time. No such obstacle hindered the Gauls, and accordingly they passed the Alps and Pyrenees, penetrated the recesses of the Illyrian range, and skirting along either bank of the Danube, after startling amidst their classic rocks the votaries of the Delphic god, planted their settlements amongst the distant hills of Asia Minor. To whatever point the Germans reached in after years, there the Gauls appear to have preceded them, natural causes probably deciding the direction of their respective routes. Southwards of the Maine and Danube, and upon the flats of northern Italy, they seem to have held the open country, whilst Rhætians and Vindilicians, Noricans and Illyrians, clung to the mountain fastnesses of Central Europe, where the remnants of ancient races may yet survive, after witnessing the passage of Gaul and Teuton, Vandal and Goth, Lombard, and many another forgotten tribe, to the conquest of the fertile south. Upon the arid table-land of Central Spain, and amongst the mountains of the eastern Alpine chain, towards the borders of the Adriatic, the Iberians and Illyrians maintained their ground, coalescing in the end with their invaders; whilst, in the valleys of the Western Alps and Cevennes, Celts were mingled with Ligurians; and the Salyes, known to the earliest colonists of Marseilles as Ligurians, without any change of name, were looked upon in later times as Celto-Ligurians, and mumbered amongst the Celtic tribes of Gallia Narbonensis.* Like the Germans, after passing through this *migratory* phase, the result, according to Livy's informant, of a superabundance of population, or, in other words, the necessity of expansion, the Gauls gradually entered upon another. Frustrated in their attempts to cross the Alps by their kindred the Cis-Alpine Gauls, after the passage of the Rhine by the ancestry of the Belgæ, the two great divisions of the Celtic race in Gaul were pent up within a

* *Strabo*, l. 2, p. 128; l. 3, p. 158; l. 4, p. 207; l. 7, p. 311, 315. *Diod. Sic.*, l. 5, c. 33.

permanent frontier on every side, and at the date of the Cimbric invasion they had become a settled people. They were no longer able to escape from the consequences of their position by the migration of their surplus population; and fixity of tenure producing its invariable results upon a state of society requiring expansion, like the Celtic, when confined within restricted limits, the class which had supplied the greater part of the armies that had carried the terror of the Celtic name across the continent of Europe, was fast becoming assimilated with the servile population of the soil, when Cæsar annexed the country to the Roman Empire.

It would be a difficult task to fix the era of the first appearance of the Celtic ancestry of the Gauls to the westward of the Rhine, but it is comparatively easy to show that they were not the original population of the country subsequently distinguished by their name. The tract included between the Rhone and "the Gallic Bays"—in other words, bounded by the Rhone, the Loire, and the Pyrenees—was known in early times as Iberia; and here, behind the Garonne, the Aquitani still held their ground in the days of Cæsar, a distinct people from the neighbouring *Celtæ*, but evidently akin to the dark-haired races on the Ebro. From the Garonne to the Cevennes, and eastwards beyond the Rhone, in the districts subsequently occupied by the Tectosages and Arecomici, known as *Volcæ—Belgæ* or invaders—dwelt at an earlier period Elysices and Bebryces, Sards and Cynesians; whilst further towards the Alps, and in the interior beyond Marseilles, the inhabitants were of Ligurian origin. The Rhone, separating, in the days of Ammianus Marcellinus, the Celtic Sequani from the *Allobroges*, the *alien* inhabitants of *Sapaudia* or Savoy, was regarded by Herodotus as the boundary between the Ligurians and Iberians—and a century before the Gallic inroad, Æschylus, who calls the Rhone an Iberian river, knew of no Celts to unite with the Iberians and Ligurians on its banks in opposing the march of Hercules—whilst, fifty years later, the vague accounts of Herodotus, derived probably from the Pho-

cæans of Marseilles, whom he places amongst a Ligurian population, prove the little that was known amongst the Greek cities of that age of the very same Celts who subsequently became the predominant race in their vicinity. Later still, when Scylax wrote, five Olympiads after the capture of Rome, though the Gauls had by this time swept over northern Italy and penetrated the recesses of the Adriatic, they had not yet reached the coasts of the Mediterranean, peopled then, as before, by Iberians and Ligurians, and a mixed population of both races; in short, they had conquered the future masters of the ancient world before they had established themselves, as a settled people, beyond the mountain barrier of the Cevennes.*

No trace can be found of their presence to the south of the Pyrenees at an earlier date than their establishment in Cis-Alpine Gaul. Niebuhr has remarked that the absence of all mention of Celts in the army that followed Hamilcar to Himera, about B.C. 480, is an argument that they were still at a distance from the recruiting ships of the Carthaginians; but long after this expedition the Carthaginians continued to recruit in Spain without enrolling any Celts in their service. In 406, when some of the first men of the republic were dispatched to enlist an overwhelming force for the Sicilian campaign of Hannibal and Hamilcar, Iberians and Balearians, Moors and Lybians, Numidians and Campanians, flocked to the standard of Carthage, but no Celts responded to the call;

* *Strabo*, l. 3, p. 166; l. 4, p. 176, 189. *Scymn.* l. 198. *Fest. Avien.*, l. 552 to 568, and 609. *Scyl. Perip. Plin. Nat. Hist.*, l. 37, c. 2. *Æsch. Fragm.* 399. *Herod.*, l. 2, c. 33; l. 4, c. 49; l. 5, c. 9. *Am. Marc.*, l. 15, c. 11. *Steph. Byz. in voc.* Ἰβηρίαι. The name *Allo*-bro is evidently the opposite of *Cymm*-bro—of *alien* as opposed to *kindred* origin. It survives in the Welch *all-fro*, ἀλλοφυλος, though *all-tud* is of more common use. Where the Welch approaches Greek, Gaelic generally inclines to Latin, and the word for *alien* tribes amongst the Gael, *For*-tuatha, is evidently akin to the Latin *foris*, the Italian *for*-estieri. A vague name like *Allobroges*, *Welch*, *Walloon*, generally marks a frontier, and the Rhone and the Lake of Geneva still form a tolerably accurate boundary between the tall, fair northerns, and the short, dark races of Savoyard type. Both *Belgæ* and *Volcæ* may probably be words of kindred origin with the Irish Fir *Bolg* or Fir *Volg*—*intruders*. Comp. *Zeuss. Gram. Celt.*, vol. 1, p. 226 and note.

nor were there any Celts amongst the luckless mercenaries whom, ten years later, Hamilcar abandoned so disgracefully to their fate. Yet Segobriga, the modern Segorbe, one of the principal cities of the Celtiberians, stands within thirty miles of the coast, and it would be unaccountable that Carthage should have been so long ignorant of the near vicinity of the very men who formed the best soldiers in her armies of a later date. The Alps once past, Celts appear on the scene, forming a portion of the force dispatched by Dionysius to assist Sparta in her struggle against Thebes, and contributing, in 367, to win for their allies the first victory achieved over their adversaries since the fatal fight of Leuctra. In Spain, as in Gaul, the Celts had evidently been preceded by an earlier population.*

* *Nieb. Hist. Rom. Ch. on the Gauls. Diod. Sic.*, l. 13, c. 80; l. 14, c. 75; l. 15, c. 70. *Xen. Hel.*, l. 7, c. 1, 23, 31. Niebuhr assumes that the Celtæ, driven from Spain by the Iberians, were forced through the Alps upon Italy, and drove back the Belgæ from the neighbourhood of the Loire —a singular theory, which he allows to be "contrary to the universal opinion of antiquity." When he remarks that in B.C. 480 the Celts were *still* at a distance from the recruiting ships of the Carthaginians, thus inferring the *southward* progress of the former people, he unwittingly contradicts his own theory; for if the Iberians were forcing the Celts *northwards* across the Pyrenees, they must have been driving them *away* from the coast and still farther from the Carthaginian ships. In assuming that the location of the Celt-Iberians amongst the hills of central Spain is an argument in favour of the predominance of the Iberians, on the ground that "no nation of invaders settles amidst the hills amongst a warlike people," he is equally forgetful that the far stronger ground of the Pyrenees was all along held by the Iberians, who, if invaders, must have failed in driving the Celts from *the hills* and succeeded in expelling them from *the mountains*. To Strabo and Diodorus the Spaniard of those days was a being of the present, whether Celt or Iberian—and the "rutilus Hispanus" shows very clearly which type was predominant in the eyes of the Romans—and whilst the former remarks on the ease with which the Iberians were overcome in turn by the Tyrians, *Celts, afterwards called Celt-Iberians and Berones*, and Carthaginians, the latter, in describing the Lusitanians as the bravest of the Iberians, adds that in enduring courage in action (κατὰ δε τὰς ἐν ταῖς συστάσεσι τῶν δεινῶν ὑπομονὰς) they were far surpassed by the Celtiberians (*Strabo*, l. 3, p. 158. *Diod. Sic.*, l. 5, c. 34). It needs stronger arguments than those brought forward by the great German historian to contradict "the universal opinion of antiquity." Dr. Latham has remarked upon the absence of the *durum*, *magus*, and *dunum*, from Spain, an absence, I should imagine, attributable to the late arrival of the Celts in that country. Coalescing generally with the Iberians

As the Gauls preceded the Germans along the Danube, across the Alps and Pyrenees, and in nearly every other quarter to which the latter people subsequently penetrated, so it is very probable that their original occupation of Gaul resembled the subsequent irruption of the Germans, and that their progress was towards the south and west, crossing the Rhine and establishing themselves in the country much in the same manner as the Belgæ and, in historic times, the Germans. Iberians and Ligurians—people of the Gascon and Savoyard type—formed probably the bulk of the original population, mingled perhaps with people of another race, submitting to, or coalescing with, the invaders, according to their local situation, but retaining their individuality beyond the Rhone and Garonne, and elsewhere perhaps amongst the hilly country in the interior. As a general rule, they formed the basis of the agricultural or Lætic population, retaining their subordinate position, with little change, under Gaul and Roman, Frank and Breton, Burgundian and Visigoth; receiving into their ranks offshoots from every race forced in turn by conquest or necessity to share their servile lot, and entering very largely into the composition of the modern French nation, especially in the population to the south of the Loire.

The intermixture of alien races amongst the Celtic population of the British Isles is as evident as amongst the Continental Gauls. The dark complexion and crisp curly hair which were the characteristics of the Silures in the days of Tacitus, and are still traceable amongst the peasantry of Wales and the south-western districts, attest the presence of an *Ibero-Ligurian* element amongst the British Celts,—independent, at the period of the Roman Conquest, to the westward of the Severn, but elsewhere, probably, like their kindred in Gaul, contributing in a great measure to form the dependant and servile classes

—much as Guthrum's Danes with the East Anglians—they would hardly introduce many changes in the topography. This difference between the topography of ancient Gaul and Spain is, I think, a still stronger argument against Niebuhr's theory.

existing under the dominant Celts.* So, six centuries later, when history gradually dawns upon the kingdom of the Saxon *Ge-wissi*, the *Wealh*—whether *Went-seattas* or *Dun-seattas*—still stand out as a separate race in the location of the Silures, to the westward of the Severn; whilst the majority of their eastern neighbours have either sunk into the undistinguishable mass of subject *Wealh*, or exchanged their earlier independence for a subordinate position under their Teutonic conquerors. Nor were the Silures, who seem to have extended over a considerable portion of the western and south-western coasts, the only foreign element intermingled with the Celtic population of the island.

When Cæsar describes the practice of self-painting to have been universal amongst the inhabitants of Britain—so much so that it seems to have originated the name of the island—he alludes to a custom totally unknown amongst the neighbouring races of the Continent, whether Celt, Teuton, or Ligurian. Nowhere is it found to have been practised amongst the dwellers upon either bank of the Rhine, the Rhone, or the Ebro; and the inference is surely allowable that through none of these races could it have been originally introduced into Britain, which rather stood out in contradistinction to the opposite coasts as "the land of Painted men."† As the Celtic and intrusive

* The shortest passage to Ireland, according to Pliny (*Hist. Nat.*, l. 4, c. 30), was from the territory of the Silures, which must therefore have extended to the coast. In fact, *Demeti* and *Ordovices* are only names of local meaning—perhaps also Silures—the former surviving in *Dyved*—Demetia—*South* Wales from *deheu;* the latter being apparently *Ord-Ewig* or "hills-men." There is a word frequently found to the westward of the Severn, never to the eastward, or, that I am aware of, in any other part of the British Isles, with one exception in Ireland. It is *Nant*, also found amongst the High Alps of Savoy, in such names as *Nant*-Bourant, *Nant* des Pelerins; and it probably is traceable in the name of *Nant*uates, a tribe situated of old to the southward of the Lake of Geneva, in *Sabaudia.* It is a relic, I suspect, of "the dark haired Silures."

† *Cæs. de B. G.*, l. 5, c. 14. *Brith*, "coloured, painted" is apparently at the root of *Bryth-yn*, *Bryth-on*, Latinized Britannia, Brito. It was a descriptive name; no more a name of race than Pict or Scot. It is singular to remark the close connexion in Welch between *Brith* and *Breith*—paint and privilege. Amongst the Thracians, the highest privileged classes were the highest painted.

element amongst the Japodes of the eastern Alps adopted this custom from the Illyrian population with whom they coalesced, so it would appear as if the invaders of Britain, whether Celtic or Silurian, must have found it prevalent amongst the earlier inhabitants, probably the "natos in insulâ" of Cæsar, and made it their own in a similar manner, some strange fascination lurking in the practice; for it may be gathered from some of the earlier councils of the Anglo-Saxon church that it needed all the influence of ecclesiastical authority to prevent the Angles from following the example of their predecessors, and becoming "a painted race." But though comparatively unknown amongst the inhabitants of western Europe, self-painting was widely prevalent in the East, where it seems to have been the mark of gentle birth. It was the universal custom amongst the Thracian and Thraco-Scythian tribes, as well as amongst the population of the Eastern Alps, as has been already noticed. The Arii, the leading people amongst the great Lygian confederacy in the days of Tacitus, were as noted in the centre of Europe for their painted shields and bodies as the "cæruleos scuta Brigantes" of Seneca in the West, or Pliny's "cæruleo capillo Agathyrsi" in the East; and the *glaucæ genæ* of the Heruli were probably attributable to a similar cause. It is not a little remarkable that the customs of self-painting and a community of wives, which prevailed amongst the Britons in the days of Cæsar, are attributed by Herodotus, four hundred years previously, to the Agathysi on the borders of the Black Sea, and were still the usage of the same people four hundred years afterwards, in the time of Ammianus Marcellinus.* Thus self-painting and Mercury worship were the peculiarities of the royal and ruling

* *Herod.*, l. 4, c. 104, 108, 109; l. 5, c. 6. *Tac. Germ.*, c. 43. *Am. Marc.*, l. 32, sec. 2. Στιγματίζειν is the Greek expression, with which the "*ferroque notatas* . . . . Picto moriente *figuras*" of Claudian (*Bel. Get.*, l. 416) agrees. It is singular that in the days of Giraldus, *Glaswir—blue men*—was the name for the Welsh clergy—"Glaswir id est viri ecclesiastici" (*Ang. Sac.*, vol. 2, p. 534). The name of the sacred class in heathen times had descended to the Christian clergy. Are the painted caste-marks amongst the Hindoos a relic of this once widely spread custom?

tribes amongst the Thracians, and far away to the westward, hundreds of miles from either Thracian or Agathyrsian, self-painting and Mercury worship flourished amongst the isolated Britons—for as Gallic was but an offshoot of British Druidism, the Gallic god must have been the great object of worship in Britain.* It would be difficult to account for the prevalence of features so similar amongst people so widely separated, unless by supposing the existence, at some remote period, of a kindred element, stretching along the borders of the Baltic and German seas until broken in upon by the inroads of Celt and Teuton, and either dispersed or absorbed upon the Continent, but sheltered by the insular position of Britain until amalgamated and forgotten amongst the successive invaders of the island.

The intermixture of alien races amongst the Celts, or *Gael*, of Ireland is equally evident. Whilst the *Fir-Bolg* in the old traditions of that country are stigmatized as "small, black, and lying," the dominant race is characterized as "the yellow-haired Gael," "tall, fair, and skilled in magic, fond of the harp and of horsemanship;" exactly as the tall, fair, blue-eyed and yellow-haired *Jarl*, and red-haired *Karl*, are contrasted in the *Rigs-mal* with the dark, stunted, and swarthy *Trall*. This original distinction of race was still remarkable at the date of the Anglo-Norman invasion, and Giraldus contrasts the characteristics of the northern and southern Irish in a manner that recalls the difference between the Gaul and the Iberian in the days of Strabo and Diodorus.† The northerns, known pre-eminently as "the men of Eire," are first discerned in the district to which they gave the name of *Uladh*—"the country," home, or *Gaul*—bordered on the south by the men of *Gailin*—"alien land"—and *Olnemaght*, looked upon as *Damnonians* and *Fir-Bolg*, people of alien race. *Emania* is the capital

* *Cæs. de B. G.*, l. 6, c. 13.

† "*Ethnology of the Ancient Irish*" (*Wilde*), p. 6, 7. *Illus. North. Antiq.* "*Rigs-mal*," p. 564. *Gir. Camb. Hib. Exp.*, l. 2, c. 18. His words are "Sicut ergo Borealis Hiberniæ bellica, sic semper Australis gens Subdola. Illa laudis, hæc fraudis cupida. Illa Martis, hæc artis ope confisa. Illa viribus nititur, hæc versutiis; illa prælis, hæc proditionibus."

of the northern, *Tara* of the central kingdom, for "the men of Eire" are not yet brought into contact with the southern *Mumhain*—"the foster-mother"—and all is dark in that quarter. In the next phase of legendary history the onward progress of "the men of Eire" is visible; *Tara* is now their capital, "the glory has departed from *Emania*," henceforth apparently relinquished to a junior branch, and *Olnemaght* is added to their dominions, and known from this time as Connaught—*Con-iochta*, "further Con"—for *Leth-Cuin*, or "Con's share," is the name of their country, and that of *Uladh* is confined to the eastern portion of the earlier province of which the rest is known as *Foclad*—the north. The *Eiscir-Riada*—"the ridge of tribute"*—is the limit of *Leth-Cuin*, the home of the free, untaxed *Saer-Clans* or *Duchasach*, whilst all southwards is *Leth-Mogh*—"the slave's half"—a name ominously full of meaning, for the *Borumha*, or "cattle tribute," was at this time due from the whole of the south of Ireland. But "the men of Eire," crossing the Ridge, established themselves in the servile provinces—their *Mumhe*, or "foster-mother," not their *Guladh* or native home—carrying with them their immunity from tribute, and at the dawn of authentic history *Mumhain*, under the *Eoganachts*, acknowledged no right in *Leth-Cuin* to impose the *Borumha*, which long continued to be exacted from the men of Leinster, descendants and representatives of the race whose kings once ruled at *Tara*. The name of *Gael*, once confined to "the yellow-haired" races of the north—like that of Frank to the *Barbarus* in Gaul—gradually extended to the whole people, *Daer* or *Saer*, dark or fair, as distinguished from subsequent invaders; every petty kinglet and chieftain was grafted upon one of the three great branches of the pure race, often by some strange and unnatural legend; and at the present day (if the pedigrees are to be trusted) very few Irishmen, of so

* Two interpretations are generally given of *Eiscir-Riada*, "the riding ridge" and "the ridge of tribute." If the first is correct, I can only say from personal experience that the name of *Dal-Riada*, "the riding district," applied to Lorn, Cowal, and Kintyre, is most egregiously inappropriate.

called *Milesian* origin, would acknowledge a descent from the despised but numerous and, at one time, powerful *Aiteach-Tuatha.**

Of the early progress of the Gaelic race in northern Britain not even a conjecture can be formed, legend and tradition having thrown no light upon the subject as they have done in Ireland. That the original and pure "yellow-haired Gael" were essentially a northern race is shown unmistakeably by their language, in which the same word *Tuath*—the *Thiod* or *Diot* of the Teutons—stands for "a people," or "a country," and "the north;" and as the use of the word *Tramontana* for the north wind would at once stamp the Italians as a people living to the southward of a mountain range, so the language in which "a country" is identical with "the north" can scarcely have been spoken by a people whose home was originally in the south. The tradition of the Cymri unites the "Gwyddel Ffichti," or Gaelic Picts, with the Coranied and the Saxons, as the three "intrusive tribes" who acquired settlements in Britain by force of arms, bringing the Picts "over the sea of Lochlyn"—the northern ocean—and placing them "in the Alban along the shores of the *Mawr Tawch*," in other words, along the east of Scotland beyond the Forth, the very heart of ancient *Scotia*. Beda also, who is perhaps the earliest real authority on the subject, representing the ideas of the seventh and eighth centuries, brings them from "Scythia," only another term for the north.† The invariable progress of invasion and colonization in Britain during historical times has been from east to west, with frequently a downward impulse towards the south, but

* For Early Irish History, *Vide* Appendix H, and for "the Pictish question," Appendix I. The *Aiteach-Tuatha* in Irish tradition play the part of the *Jotuns* of Scandinavia—appearing as a giant-race. The name seems to have been derived from *Aite*, "a place," "a country," and merely means *pagani*, "country people" or "peasantry"—the agricultural class attached to the soil. It is high time they should cease to be confounded with the *Attacotti*, for whose presence in Ireland there appears to be not a shadow of authority.

† *Bed. Hist. Ec.*, l. 1, c. 1. The Cymric traditions I quote from Betham's "Gael and Cymri."

never in a contrary direction, nor is there any reason for imagining that the tide flowed differently in pre-historic times. The Belgæ, the latest settlers in the days of Cæsar and of Tacitus, were found upon the eastern coasts; Saxon and Angle occupied originally a similar position, the downward progress of the northern Angles pressing *Wealh* and *Ge-wissi* towards the south and west; and when the Northmen established themselves in the island they formed no exception to the general rule. Hence it seems probable that the Cymric tradition is correct, and that the ancestry of the Gael, arriving at some remote period across the Northern Ocean, established themselves as the dominant race throughout the north and east of Scotland.

Previous to the arrival of the Angles, their southern neighbours were the Cymri, the other branch of the Celtic race which is found in Britain. With the Britons of the south, *Lloegrians* as they are sometimes called—who carried the name of *Breton,* not of *Cymri,* across the channel—and indeed with the majority of the Provincial, or Romanized Britons, the Cymri had little traditional connection. Many of the former were of Belgic origin, and the Celtic element amongst the Cymri appears to have been allied to the *Celtæ,* the earliest known and original Gauls.* All the *Lloegrians,* according to Cymric tradition, "became Saxons, except the Cornishmen and the Commot of Carnoban in Deira," contributing to form the dependant classes of "the *Wealh,*" who long stood out as aliens amongst their Saxon and Anglian masters. The original home of the ancestry of the modern Cymri —or rather, perhaps, of the ancestry of "the noble tribes" of Wales—is to be sought amongst the extra-provincial Britons beyond the Wall of Severus. Here flourished the poets who celebrated the stand made by their favourite

* To the various instances brought forward by Mr. Garnett and others in proof of the connection of the Celtic element amongst the Cymri with the *Celtæ* or older Gauls, may be added the Latinized *Penilucus* near Villeneuve, at the head of the Lake of Geneva, evidently *Pen-y-lwch*, "head of the lake." *Pena* de la mesena, "mizen peak," and *pena* and *penasco*, "rocks" or "crags," are also found in Portuguese and Spanish.

Urien against Ida "the flame-bearer;" here was the fatal Bamborough, known to the Britons as "Bernicia's thraldom," the keystone of the early Anglian power in the north, as "Edwin's burgh" secured their conquests on the Forth at the opening of the seventh century. Here also was *Gododin*, the scene of Taliesin's poem, a name traceable perhaps in the ancient tribe of the *Otadeni* and in the modern districts of "the Lothians;" and from this quarter came apparently "Cynedda Gwladig," who, driving out the Irish Scots from South Wales, established his authority over the whole country, probably reducing the Romanized descendants of the Silures and Ordovices—the dark-haired races to the westward of the Severn—to the dependant condition of "Aiteach-Tuatha."* *Cymru*, or Cumbria, was the name applied by the Cymri to their home, and

* *Nen. Geneal. Din-guaroi-Gwrth Bryneich* means "the fortified *Dyn*, Bernicia's curse"—like the *Zwing Uri* of Gessler in Switzerland. The very name of *Deira—Deheu*, the south—seems to point to the true location of the Cymri. It is *north-east* of Wales but due south of *Gododin*—Northumberland and the Lothians. *Gwladig* or *Wladig* is derived from *Gwlad* or *Wlad*—Gaul, home, or native land—and latterly meant amongst the Welsh "the ruler of the land." Its Gaelic form would be *Guladach* or *Uladach*, and *Guladh* or *Uladh—Ulster*. As the words *Leod*, *Leute*, *Theod*, *Theoden*, *Dryht*, *Dryhten*, appear in Beowulf and elsewhere as *Lord* or *People* indifferently, marking a time when all "the people"—the privileged race—were *lords*, so the meaning of *Guladach* was evidently in early times "the ruling class," retaining this meaning in Ireland, where the *Uladach* were the dominant race in *Uladh*, but amongst the Welsh becoming, like *Ætheling* amongst the Anglo-Saxons, restricted to "the ruler." In fact, *Guladach* might have once been translated *Æthelings*, and was probably the native name of the Equites, passing into Greek as Γαλαται. The resemblance of *Wladig* to the Sclavonic *Wladaca*, the Montenegrin *Vladica*, has been often noticed. It may be accidental, like that of the Lappish *Ammas* to the Gaelic *Amas* (*vide* p. 217, note), but if the words are identical, it is very remarkable. The Sclavonic *Wladaca*, Ruler, and *Wladnik*, occasionally equivalent to *liber baro*—Freiherr—is connected with *Wladac*, to rule, but *Wlad* has no meaning in the Sclavonic. It is totally different in the Celtic languages, and wherever there were *Wladach* there must have been an *Wlad*—Gauls must have found "a home." If, then, the *Wladig* penetrated into the Sclavonic dialects as the *Wladaca*, the ruler; if the *Wladnik*, the Gaul, was a Freiherr, Gauls must have once dwelt as a ruling class amongst the Sclavonian races, like the Germanic *Leuds* amongst the dependant *Wealh* or Provincials; which would have been the result of those continual migrations of which history has only noticed the partial results in the conquest of Northern Italy, the sack of Rome, the irruption into

on their northern frontier they long held *Alclyde*, the modern Dumbarton, and the dependant territory of the Lennox, which appears to have once included a wider district than the later earldom of the name; whilst tradition speaks of a time when Stirling, then perhaps known as *Snowdun*, was upon the frontier of the Picts, the Britons, and the Northumbrian Angles.* How much further this Cymric population may have extended, whether they once spread over the whole of northern Scotland, or whether they only represented the northern portion of the powerful tribe of the Damnonii, separated from the rest of their kindred by the northern wall, are questions which it would be difficult to decide; though it may be safely assumed that the population which occupied the districts over which the Gael subsequently ruled supreme, must, after the arrival of the latter, have been reduced to the condition of dependant *Aiteach-Tuatha.*†

Greece, and the settlement of the *Guladach* in Asia Minor. Along the eastern coasts of the Adriatic, where the *Vladika* still rules in Montenegro, Gauls undoubtedly settled amongst the early Illyrian tribes.

* *Ford.*, l. 8, c. 79. Tullibardine, Auchterarder, and Kincardine, are described in old charters as situated in *Cathair Levenachs* (*Reg. Morav. Cart. Orig.*, 10, 12).

† *Vide* Appendix I. In Ptolemy's Geography it will be found that the *Damnonii* who peopled great part of the district afterwards included in the Scoto-Cumbrian kingdom of Strath Clyde, also extended far beyond the Forth, reaching apparently to the Tay. Their territories were subsequently divided by the wall of Antonine, the northern portion of the tribe being probably the ancestry of the Cymric population who so long retained their hold upon Dumbarton and the Lennox. Of the thirteen tribes placed by the same geographer in northern Scotland, the Caledonii occupied the whole Highland district eastward of the Glen More, stretching from Loch Fine to the Beauly Firth, three other tribes peopling the northern and eastern lowlands; whilst in the remainder of the country, which at that time must have been thickly wooded and thinly peopled, no fewer than *nine* small tribes are enumerated, who would almost seem to have been forced westwards by the pressure of the eastern clans. One of the peculiarities distinguishing the Celts from the Iberians was the size of their confederacies, the former uniting in large, the latter splitting up into small communities.

Appendix C.

LÆTS.

The name of *Læt* was originally applied without any distinction of race to the dependant population connected with the land. The Læt was the land-*holder* as opposed to the land-*owner*, the tenant or *lessee* holding by sufferance as the *Ingenuus* held by "right of blood," and often the original occupier of the land—particularly amongst the Romanesque or provincial population of the empire—allowed to remain on paying *gafol*, and subject to *coigny*, and various other burdens subsequently commuted for *rent*. His condition varied with the circumstances of the age, or of the usages of the people amongst whom he was placed; just as at the present day the condition of the farming class is widely different in Eastern and Western Europe. When the Germans had no personal slaves the Læt answered to the servile land-holder or actual cultivator of the soil, subsequently known as *servilis mansuarius*, whom Tacitus was surprised to find a *house-holder*, enjoying his separate *sedes et penates*, but supplying his lord with food, clothing, and every thing that the free-born "consumer" chose to exact; but after the division of the servile class into personal and prædial, the former were generally known as *Scalcs* or *Theows*, the latter as Læts or *mansuarii*, and when free, as *liberti*, free Læts, or *liberi mansuarii*.* Witikind divides the Saxons into the three

* The *Mansio* was the equivalent of the Hyde, and the *Mansuarius* an occupant of a house "infra terminos villæ cum terris, domibus, mancipiis, vineis, pratellis, silvola." *Marc. Form.*, l. 2, 36 (*Canc.*) He might be either free or servile, the Denarialis being as free "Sicut alii reliqui mansoarii qui

classes of *Adelings*, *Frilings*, and *Læts*, the latter class being again divided, according to Adam of Bremen, into liberti and servi;* and in the old Saxon and Frison laws the *Litus* holds his ground between the Ingenuus and the Servus—the occupying tenant between the Freeholder and the Serf—whilst amongst the Alamanni, Bavarians, and Angles of Thuringia, the libertus and free Læt may be regarded as very nearly synonymous.† A class was gradually arising in connection with the land, free, but not proprietary. Amongst the Lombards *Aldio* appears to have been its equivalent, whilst with the Goths and Burgundians *Originarius* seems to have answered to the Læt in the character of "original occupier of the soil," and *colonus* in that of "agricultural tenant and cultivator." The state of society revealed in the Frank laws was rather more complicated, but in one sense *Romanus* may be said to have often answered to Læt, for the majority of the class attached to the land were unquestionably of provincial descent originally—were *Wealh*, in short, for *Romanus* was simply the Latin word for *Wallsc*, as *Barbarus* was for *Theotisc*. Romanus, however, was a name connected with race, Læt with tenure, and the Roman might be Ingenuus, Tabellarius, or Conviva Regis. A free Frank might become a Læt or a Serf, but scarcely a *Roman;* a *Colonus*, but hardly an *Originarius*. Entrusted with the *Here-geat*, or temporary loan of arms, the Læt followed his master to the field as a *Lidus in hoste*, not

. . . . noscantur esse relaxati liberi." *Do.*, l. 1, 22. By *Leg. Rip.*, tit. 62, sec. 1, if any one made his serf "tributarium aut litum," the *wergild* was 36 *sol;* and as by the same law the wergild of a *servus* and *servus ministralis* were respectively 36 and 25 *Sol*, it is evident in this case the *litus* was an unfree *Læt*, a servilis mansuarius, or serf planted on the land. The entire class seems gradually to have been enfranchised up to a certain point, and were oftener known in later times as *Villani*. The name seems to have been familiar to the Romans before the fall of the Western Empire as applicable to the Germanic population settled as *Tributaries*, not *Ingenui*, within their frontiers. In the days of Tacitus the Batavi were not of this class; they were *Allies—Ingenui*.

* *Witikind*, l. 1. *Ad. Brem.*, l. 1, c. 5.

† *Frilaiz* is used in the Bavarian laws for "liberi qui per manum sunt demissi liberi," and *Frilaizin* occurs as a gloss in the old Salic law. *Leg. Bai.*, tit. 7, c. 10. *Do. Ed. Her.*, l. 6 (*Canc.*) *Leg. Sal. Pact. Ant.*, tit. 15, 1.

as a *Hirdman* or *Gasind*—a personal retainer whose sole profession was war. The Læt appears amongst the Kentish Jutes, but his usual equivalent amongst the Anglo-Saxons, as amongst the Franks, was the *Wealh*, the *Gafol-gelda* answering to the *Fiscalinus* or Crown-Læt, whilst the landless *Wealh*, though free, ranked with the Saxon *Thcow*, *Wealh* being, in one sense, like *Slave* at a later period, only another word for Serf.*

To imagine that a population of this description, occupying the soil without any of the privileges belonging only to "right of blood," was a peculiarity confined in any way to the Germanic invaders of the Roman Empire, would be a most erroneous supposition;—such a class—known amongst the Irish, for instance, as the *Aiteach-Tuatha*—having probably existed from the very earliest period as a prominent feature in every conquest effected at the expense of a comparatively settled population. Amongst the Israelites, for instance, it may be easily traced, amongst whom this class seems to have been known under the names rendered in our version "stranger and sojourner," but in the Vulgate, by Jerome, in whose days the Roman system was a reality, *advena et colonus*, terms continually occurring in the older Continental codes. Slaves, according to the Mosaic law, were to be procured from the neighbouring nations, and no Hebrew freeman, or "poorer brother," was to be reduced below the condition of a hired servant or "a stranger and sojourner"—advena et colonus—the *alien* (or Welsh *alltud*) and the *nativus*, or inborn occupying tenant.†

* Thus *Bondman* is rendered *Scalc* by Ulphilas, *Knecht* by Luther, and *Wealh* in the Anglo-Saxon version.

† The Mosaic theory vested the property of the land in the Divine Ruler of the people, who were simply "strangers and sojourners"—advenæ et coloni—and could not dispose permanently of their "holdings," which were to revert at every Jubilee to the representatives of the original "*Allottee*." The state of Egypt may have suggested this theory to Moses, "learned in all the lore" of that country, where the whole of the land not in the possession of the sacerdotal noblesse was at that time vested in Pharaoh, the Egyptian people being no longer freeholders but tributaries—or *Læts*—*Levit.*, c. 25, v. 23, 35, 39, *et seq.* *Alltud*, or alien, did not necessarily imply foreign extraction, but the want of that "right of blood" which originally conveyed "freehold right" to

It is probable that in most instances a population of this description was originally of a different race from the ruling *Ingenui*, the provincials within the limits of the Roman Empire generally supplying this class beneath their Germanic conquerors, until the invariable results of "fixity of tenure," crime, poverty, and various other causes, gradually introduced a large admixture of the Teutonic element into the dependant and servile classes. It may be gathered from Nithard that there was a considerable infusion of the Sclavonic element amongst the Saxon Læts, and Ohter informed Alfred that the majority of the *Gafol-geldas* in his days amongst the Northmen were of Finnish race; though the *Sumarlidi*, or Summer forays, of the Scandinavians must have replenished the ranks of their Serfs and *Thralls* with a motley collection of Wends and Britons, Gaels and Provincials, and English or Continental Germans.* Races of kindred origin, however, were not unfrequently reduced to servitude, as in the case of the Ansibarii in the days of Tacitus, and in the later instance of the Thuringians; for after the final conquest of their kingdom by Theodoric it was not annexed, like Alemannia or Bavaria, as a tributary province enjoying, to a certain extent, its own laws and customs, but it was incorporated with the Frank Empire as *Salic* land, and in the most ancient laws of the district, Angles and Werns, placed upon an equality with the Franks, are regarded as Thuringians, the older population having evidently sunk into the condition of Læts and Serfs under the descendants of the *English* auxiliaries, to whom Theodoric had made over the land.†

the proprietor, and "native right" to the tenant or serf.

* *Nith. Hist.*, l. 4, an. 842. *Alf. Oros.*, l. 1, c. 1. Lothaire incited the *Frilings* and *Lazzi*, "quorum infinita multitudo est," to rise against the *Athelings*, and, accordingly, driving out their lords, they assumed the name of *Stellingas*—perhaps *O-stellings* or Easterlings. "Igitur metuens Lodhovicus ne Nortmanni, necnon Sclavi *propter affinitatem Saxonibus qui Stellinga* nominaverunt, conjungerent, etc." There seems to have been no equivalent for the *Læt* amongst the early Scandinavians; no settled population retained in subject dependance, upon whom the freeborn conquerors could be quartered as in the Roman provinces.

† *Tac. An.*, l. 13, c. 54-57. *Procop. de Bel. Get.*, l. 1, c. 13. *Greg. Tur. Hist. Ecc.*, l. 3, c. 7. *Witikind*,

This Lætic class, often representing the original occupants of the soil reduced to servitude, but not dispossessed, by conquest, would appear to have been of a more fixed and settled character than their freeborn masters the nominal proprietors of the land, who frequently must have resembled an army living at free quarters upon their dependants rather than a stationary and cultivating class; and as tribes of kindred or alien race who had been reduced to the condition of *clientes*, or tributaries, must have regained their independence if released from the power of the dominant race, so the Lætic portion of the population must have been occasionally left behind when their conquerors sought out other spheres for the exhibition of their restless valour. Strabo describes Cis-alpine Gaul as peopled up to a certain period by Gallic and Ligurian tribes, but after the Gallic wars the greater part

l. 1. *An. Qued. Leg. Ang. et Wer.* The *Ansibarii*, or men of the northern Ems, must not be confounded with the *Ampsuarii*, mentioned in connection with the Catti under the Frank Marcomer many generations later (*Greg. Tur. H. E.*, l. 2, c. 9), and who were probably the men of the Ems of Nassau. The account of Gregory, that the *Franks* crossed the Unstrode dryfoot on the corpses of the Thuringians, is transferred by Witikind to the *Saxons*. This is the real conquest of the Thuringians by the Saxons. The story was true—there was a real conquest, as in North Britain, only in both instances misplaced. These Thuringians seem to have been the descendants of the Cherusci, a people who, in the days of Tiberius, bordered on the Bructeri and the Weser, before the encroachments of the Chamavi and Angrivarii, but who in the time of Tacitus were situated north of the Hermanduri, east of the Chatti or Hessians, and south of the Chauci. After the Marcomannic war the Hermanduri were located to the north-east of Bohemia, or out of the limits of Germany, their former locality being occupied somewhat later by tribes of Alamannic and Frank origin, neither of these people answering to the Thuringians. The latter were situated east of the Hessian Franks and south of the Saxons. The Chauci, a people renowned from the days of Tiberius for their size and numbers, increasing in power when Tacitus describes the decline of the Cherusci, driving out the Ansibarii, as their confederates the Chamavi and Angrivarii—the progenitors of the men of Westphalia and Engern—drove before them the ancestry of the Salic Franks, and attacking the Roman province of Belgica at the era of the Marcomannic war, were surely amongst the ancestors of the Ostphali, and no people are left to represent the Thuringians except the Cherusci. *Tac. Germ.*, c. 35. *Vel. Pat.*, l. 2, c. 105, 106. *Spart. in Did. Jul.*, c. 1. *Jornand*, c. 22. The hereditary animosity of the Chatti and Cherusci, described by Tacitus, is reproduced in the pages of Gregory as the hatred between the Franks and Thuringians.

of the Gauls who survived the struggle left the country, the Ligurians remaining in much the same position under the Romans as they had probably occupied under the rule both of Gaul and Tuscan.* Assyrian and Chaldee, Mede and Persian, ruled successively over the once fertile territories of Nineveh and Babylon, but the subject tillers of the soil were the descendants, probably, of the same dependant population which had occupied the land under the original Cushite proprietary. Little impression could have been made upon the earlier inhabitants of Dacia, or of northern Italy, by the presence of the Goths, who scarcely found a real home before they settled in Spain and in the *Septem Provinciæ;* and if the Burgundians had moved onwards after their first occupation of Gaul, their provincial *hospites* would have at once resumed their earlier character of a proprietary and tenantry more or less independent. When Maraboduus led his followers from the victorious arms of Tiberius into the localities once occupied by the Boii, he reduced all the neighbouring tribes to a dependant condition, and when the descendants of his Marcomanni are subsequently found as *Boiarii* on the banks of the Lech, *Bohemia* is peopled by Slavonic Czeks, representatives of the older population known as Jazyges rather than a foreign intrusive people;† whilst in various parts of the ancient area of Germany, the changes and movements of the Teutonic tribes may have brought to light the older occupants of the country, generally Sclavonic races, who appear from this cause in the light of an invading and encroaching people.

The influence of the Lætic classes upon the population,

* *Strabo*, l. 5, p. 216. So also when the Jews were carried captive to Babylon, "the poor of the land" were left to be vine-dressers and husbandmen. 2 *Kings*, c. 25, v. 12.

† It has been suggested by Dr. Latham that the Bohemia of Maroboduus was part of modern Bavaria; but it was bounded on the north and west by *Germania*, on the south by *Noricum*, on the east by *Pannonia*, and was not above two hundred Roman miles from the summits of the Alpine passes into Italy. (*Vel. Pat.*, l. 2, c. 109). This is unquestionably modern Bohemia. Bavaria, in the days of Charlemagne, was bounded on the north and west by the Lech and the Danube, and would in the days of Maroboduus have been within the Roman frontier.

arising out of their amalgamation with the *Ingenui*, varying as it must have done according to the numbers and composition of the former, has hardly been sufficiently attended to. As the progress of this amalgamation advanced, the various dialects once in use gradually blended into a common language, often influenced in its structure, and invariably in its pronunciation, by that element in the population which, relinquishing its own, adopted an alien speech; and thus a test of considerable accuracy may be attained for ascertaining the relative proportion and influence of the once different elements in many a modern population. For some centuries after the overthrow of the Roman Empire in the west, the dominant aristocracy of Gaul, Spain, and northern Italy, used a language totally different from that of their dependants and tributaries, as well as from that of the older proprietary who shared in a provincial origin; but the preponderance of the provincial over the Teutonic element—of the original *Læt* over the original *Ingenuus*—is amply testified by the languages which are now spoken in all those quarters. In central Europe and in the British Isles the Teutonic has maintained its ground, the alien or Lætic element asserting its presence—like the Francic in Gaul—by altering the *pronunciation* of the language; two peculiarities deserving notice in connection with this change, the retention or omission of the initial aspirate, and the introduction of soft or hissing sounds in place of the ancient hard pronunciation.

In ancient Greek and in Latin the presence of the initial aspirate is undoubted, and it may be gathered from a remark of St. Augustine that the proper pronunciation of the *h* was as much a *shibboleth* amongst the Roman society of his era as it is amongst ourselves at the present time.* Tesselated upon the door-step of one of the houses at Pompeii may still be read the phrase of wel-

* *Angust. Confess.*, l. 1, sec. 29. Ut qui illa sonorum vetera placita teneat aut doceat, si contra disciplinam grammaticam sine aspiratione primæ syllabæ *ominem* dixerit, displiceat magis hominibus quam si contra tua præcepta hominem oderit. Jerome also remarks, "ipsa Latinitatis et regionibus quotidie mutetur et tempore." According to Polybius the old Latin of the era of the first Punic war was barely intelligible in his days.

come, *Have*, and the modern pronunciation of the word, *Ave*, would probably have grated upon the fastidious ears of the Roman proprietor as much as the *omo* to which the Bishop of Hippo alludes in his own days. From modern Greek, from Italian, in short, from all the languages of the south, the initial aspirate has been banished, retaining its position in the Teutonic dialects, and occupying an intermediate place in French and English, the former approaching the southern, the latter approximating to the northern usage. It was not from amongst the upper ranks of society that this change originated: the soft southern pronunciation is traceable to some element amongst the Lætic classes, especially predominant to the southward of the Alps and Pyrenees, and prevailing more or less amongst the old provincial population of Gaul and Britain. As amongst the ancient Romans, and probably also amongst the ancient Greeks, so amongst the modern populations arising out of the amalgamation of northern and southern nations, the *h* is the *shibboleth* of the north, the mark of the dominant people, and its gradual disappearance can only be traced to the numbers and influence of the Lætic classes.

Another test of this influence may be traced in the mutation of the hard *c* or *k* into *ch* or *sh*, or into the softer sound of *ç*, *t*, or *ts*, of which our own language affords many examples. Amongst the many dialects existing in the fourteenth century, Higden enumerates three, corresponding in a general way with the three great divisions of Wessex, Mercia, and Danelage, the men of Wessex and Danelage scarcely understanding each other —whilst the Mercians, situated between the two extremes, were familiar with the dialects both of the north and south; and from this cause it may have partly arisen that modern English is based upon the dialects of Mercia and the midland districts.* The existence of these variations in the ancient language may still be traced in the

* *Higden in Gale and Fell*, vol. 2, p. 210-11. The utter impossibility of laying down any rule for the pronunciation of several of our words—those ending in *ough* for instance—shows what a mixed race the modern

different pronunciation of the names of those towns which have grown up around the old Roman *Castra*. The *Chester* prevails throughout Wessex, as in Ro*chester*, Chi*chester*, Win*chester*, approaching the pronunciation of *c* before a soft vowel amongst the inhabitants of Italy—dying away upon the frontiers of the Cornishmen in Ex'*eter*, spelt by Camden Ex*cester*, where the *Gewissi* and the *Damnonians*, or Cornish *Wealh*, long dwelt together in separate divisions of the same city. The *Cester* is found in Mercia, where the *c* is soft as in the French pronunciation, with the same tendency to ellipse or ellision, as in Lei*cester*, Ci*cester*, Uttox*eter*, pronounced Lei'*ster*, Ci'*ster*, Ux'*eter*. It is probably from the Mercians that we get our modern pronunciation of *c* before the soft vowel, for had the Wessex dialect prevailed, it might have approximated more closely to the Italian usage. It is remarkable that as the Welsh frontier is approached, the *Chester* again appears, *Chester*field, *Chester*, and Man*chester*—the south Lancashire form of the Warwickshire Man*cetter*—occurring either amongst the hills where *Carrs* and *Torrs* still prevail, or in localities where a Cymric population is long traceable. In northern, and parts of central, Danelage, the old hard pronunciation is still preserved, as in Don*caster*, Tad*caster*, An*caster*, the *Chester* reappearing beyond the Tees—in Cun*chester* or *Chester* le Street and in Lan*chester*, the form in St. Cuthbert's territory for Lan*caster*—proving incidentally that the permanent colonization of the Northmen stopped upon the banks of the Tees, just as the comparative absence of *castra* beyond the southern wall marks the real limits of the permanent Roman occupation.*

English spring from. According to Ihre (*in voc. H*) amongst the *Dalecarls*, the *H* is frequently left out or put in, contrary to the custom of the other provinces—a peculiarity very traceable in many parts of England.

* The *Chester* is found in Northumberland, Roxburghshire, and Berwickshire. In his "Language and Dialects of the British Isles," Mr. Garnett has pointed out the similarity of the Lancashire *Oandurth* (a word in familiar use amongst Scottish burghers) and *Yeandurth*—forenoon and afternoon—to the Breton *Anterth* and *Enderv*. The *Caster* and the *By* mark the Northman, and it is singular how their actual colonization may be traced by these two words. Danish Northumbria and Danish Mercia were colonized

There was a time when the pronunciation of every Teutonic race in England, whether Jute or Angle, Saxon or Frison, more closely resembled that which still lingers in the north, and the existence, numbers, and influence of the Lætic and alien classes, may be fairly tested by such changes as that of *scip, sceap,* and *kirk,* into *ship, sheep,* and *church*—a word all but unpronounceable by a modern Icelander—of *c* hard into *ç* or *ch,* of the Teutonic into the Welch *w,* as well as by the struggle that still goes on to reject the old Teutonic *h* from the dialects of the lower orders.*

The *h* still retains its position in all the Teutonic dialects of the Continent, but influences similar to those that have changed the Anglo-Saxon *scip* into the English *ship*

more or less thoroughly, but Guthrum's Danes in East Anglia and Essex appear to have coalesced with the Anglo-Saxons, more as the Goths and Burgundians did with the provincials of Gaul and Spain, and consequently scarcely any change is noticeable in the topography of South Eastern Danelage. It is worth noticing, perhaps, that where the *ch* softens into *ç* amongst the Mercians, the Cymric traditions place the *Coranied;* whilst where the *ch* is again replaced by *ç* on the borders of the *Damnonii,* they preserve the remembrance of certain "men of Galedin;" both races being distinguished in the same traditions from the *Loegrians* and *Cymry.*

* The pronunciation of the Northumbrian Angles differed in Beda's days from that of the Saxon *Ge-Wissi. Ead*bert, *Ead*ward, *Eal*fred, were evidently Wessex forms of the Anglian *Œd*bert, *Æd*ward, and *Œl*fred, just as *Ceaw*lin was the same as the Anglian *Cæl*in, *Ceorl* as the Anglian *Cyrl.* Did this difference originally exist between the *Saxon* ancestry of the *Ge-Wissi* and the *Suevian* ancestry of the Angles, or did it arise *after,* and in *consequence* of their respective settlements? It certainly looks very like a first step towards that softening influence which has so changed the hard form of the older pronunciation—like that which changed the hard *gu* into the softer *gw*—and is recognizable, I think, in the pronunciation of many words at the present time. Even in the absence of any other proof, the general prevalence in the cottages of our peasantry of the words *Daddy* and *Mammy,* diminutives of the Welsh *Dad* and *Mam,* would mark the great intermixture of *Wealh* and *Ceorl* amongst our agricultural peasantry; just as boat*swain,* cock*swain,* and *skip*per, point to the original preponderance of the Norse and Danish element amongst our seafaring population. *Mop, mattock, basket, tackle, clout, solder, size,* and many other similar words, which, as Mr. Garnett showed, are derived from the *Wealh*—to which may be added *paw* and *buttery*—sufficiently point to the *Lætic* and servile classes amongst the population. It was the daughters of the *Wealh* who first taught the children of the "Engle" to call their *father, daddy,* and to leave out their *h's.*

—the old Picard *Blanque taque* into the modern French *Blanche tache*—are clearly traceable in the mutation of the old Teutonic *sc* into the modern German *sch*. Amongst the Icelanders, fugitives from Norway in the ninth century, colonists upon an inhospitable shore, where little if any previous population appears to have existed, it would be natural to expect the nearest approach to the ancient language of the North; and accordingly it will be found that the language now spoken in that frozen region varies very little from that which was carried thither a thousand years ago; and the modern Icelander, who finds a difficulty in such words as *church*—so different is his pronunciation from that of southern Germany—can read with facility the oldest Danish manuscripts, a significant proof of the little change in a language where there is no intermixture in the population. Neither is there any trace of a compact and *settled* population existing in Scandinavia before the arrival of the Northmen, and though the language of the Swedes and Danes varies from the speech once in use amongst their forefathers—for in the amalgamation of the two races with the Goths the dialects of the latter, as well as those of the neighbouring Germans, must have exercised their natural influence—the old hard pronunciation is still in full force beyond the Eider. Southward of that boundary, as the northern coasts are left behind and the mountains of central Europe are approached, the modern pronunciation differs more and more widely from the ancient usage. "The hissing sounds begin on the frontiers of France and Italy, diminish in the middle of Germany, and nearly disappear in north and low Germany."* Beyond the limits of the Roman Empire the

* Bosworth, *Pref. to A. S. Dict.* The theory that divides the German dialects of eighteen centuries ago into *High*, *Low*, and *Middle* is scarcely correct. Different dialects probably existed, but they hardly conformed to the present divisions of the language. I must venture to differ from Dr. Latham when he says that, "The Saxon language is extinct in Germany, being replaced by the *Platt-Deutsch* derivatives of the Francic or Franco-Batavian . . . . It was Charlemagne who extended the Frank German at the expense of the Saxons, otherwise the present dialects of Westphalia and Hanover would be *English*, or at least Anglian and Angliform." (*Germ. Pref.*, p. v. vi.) His sole authority for this "system" of Charlemagne is

ancestry of the Hollander, the Frison, and the Old Saxon, dwelt originally amongst a Lætic population, probably far less numerous, less compact, and differing in many respects less from the dominant race than in southern Germany and beyond the Rhine; and, as might be expected, the low German approaches the nearest to the old Teutonic form. But both Frank and Burgundian, Swabian and Bavarian, established their dominion over former provinces of the Roman Empire, amidst a compact and

Eginhard (p. xliv.), who mentions in his Life of Charlemagne (sec. 7) that at the close of thirty-three years of war, *i.e.*, in 804, the emperor transplanted 10,000 men, with their wives and children, from either bank of the Elbe, scattering them over Gaul and Germany, adding under the same date in his *Annals*, that they were taken from *Wihmuodi* (the *Chron. Moissac* 804 adding *Hostingabi* and *Rosagavi* —the people of the *Wümme*, the *Oste*, and from near *Hersefeld*, all in the Duchy of Bremen, according to the notes of Pertz), and from the opposite banks of the Elbe. The latter district was made over—not to *Franks* but—to *Obotrites*. The act of Charlemagne will account for *Sachsenhausen* opposite Frankfort, and for similar *Saxon* colonies introduced into other parts of Germany, but there is not one word in the narrative of Francic or Franco-Batavian colonists introduced into Saxony. The same Eginhard in his *Vit. Carl.*, sec. 17, notices the vast extent of *Saxonia*, "Germaniæ pars non modica est, et ejus quæ a Francis incolitur duplum in lato habere putatur, cum in longitudine possit esse consimilis." Within a few years of Eginhard's death, Nithard, in describing the revolt of the *Stellingas* in 842, uses the words "infinita multitudo" in connection with the Saxon Frilings and Læts, to whose *Sclavonic*, not *Francic*, affinities he also alludes (*vide* note, p. 235). Within another generation or two the Saxons rose to be the leading people of Germany, long maintaining their pre-eminence in a manner to totally preclude the idea of Francic colonization going on amongst them. That the language spoken over so wide an area should have been altered by the removal of a few thousand families from the neighbourhood of Bremen I cannot believe. The separate regulations for the Saxons in the Imperial Constitutions, the *Sachsenspiegel*, differing from the ordinary Frank codes, and the remarks of many a chronicler, point to the existence of a vast population of the Old Saxon race long after the measures of Charlemagne are supposed to have exterminated them. The modern *Platt-Deutsch* spoken in this quarter is surely no imported dialect, but represents the language of the Old Saxons influenced and altered by *internal* causes alone. Professor Leo has noticed (in his "Local Nomenclature of the Anglo-Saxons," pt. 3) the similarity of Anglo-Saxon and *Alamannic* topography. The language of the Anglian Suevi, transported into Britain, has been subjected to influences differing from those which have affected the language of the ancestry of the modern Swabians. Hence the descendants of the former speak *English*, whilst the latter speak *High-German;* but surely this difference did not exist between the original dialects of the Angles and the Semnones in the days of Tacitus?

settled population which had long owned the supremacy and obeyed the laws of the conquerors of the olden world; and whilst the Teutonic dialects of the two former people have gradually melted into the language of modern France, it is to the amalgamation of Rhætian and Helvetian, and of Norican and Vindelician, with their Swabian and Bavarian masters, that the wide variation from the old pronunciation must be traced, which has converted such words as *svert* into *schwert; ist, vist,* and *Kanst,* into *ischt, vischt,* and *Kanscht;* and through which the old northern *Ic—Ich* in modern German, and softened into *I* amongst ourselves—has become *Isch* amongst the mountains of Switzerland and Tyrol.

How far have the dialects of the Celtic races been an influencing cause of the changes which have thus arisen? The prevalence of "the hissing sounds" is very evident in such Gaelic words as *Sionnan* and *Sith,* of which the pronunciation, resembling that of our English termination *tion,* is *Shannon* and *Shee;* whilst in the general absence of the initial *h* the modern Celtic dialects adhere closely to the southern usage. In another particular also, in the position of the descriptive epithet or adjective, exemplified in such words as *Bally*-shannon, *Dun*-shaughlin, *Tre*-gony, *Llan*-gollen, the Celtic is identified with the southern practice; in other words, with the languages in which *Strada* Reale, *Civita* Vecchia, and *Rue* Vivienne are found instead of Ald-*borough,* Carl-*stadt,* Hoog-*straat.* But did the Celtic dialects in their earliest forms exhibit these peculiar characteristics? A glance at the topography of ancient Gaul and Britain would appear to suggest the contrary, for in Sego*briga,* Augusto*dunum,* and Novio*magus* the distinguishing epithet is *prefixed* to the *Brugh,* the *Dun,* and the *Magh,* following the *northern* or *Teutonic* usage; whilst in Iberian names, in which language the *Illi* is supposed to have meant "a town"—akin probably, to the Latin *Villa,* the Gaelic *Baille—Illi*berris, *Ill*urgi, and *Ill*erda, are instances of the contrary practice. In such old words, again, as Cruithin-*Tuath,* Gu-*lad,* Ar-*magh,* the Celtic follows the northern, instead of

the modern southern usage, exemplified in *Tuath*-Mumhain, *Leth*-Cuin, and *Magh*-Innis. So in the Thion*ville* and Louis*ville* of the French, the old *Francic* element appears contending, as it were, against the influence of the provincial population. From the title of the chief magistrate amongst the Aedui, *Vergobretus*—a word less altered in the Gaelic *Fear-go-breith* than in the Cymric *Gwr-y-cyfreith*—it is evident that the language of the *Celtæ*, or older Gauls, had felt this foreign influence as early as the time of Cæsar, and probably long before.*

The absence of the initial aspirate again was not a peculiar feature of ancient Gaelic. According to Mr. O'Donovan, one of the very best of modern authorities on such points, "in the oldest monumental inscription in Ireland no trace of aspiration is observable . . . but *h* is used as a separate consonant;" and there are examples of its similar use upon the earliest tombstones at Clonmacnois.† In the older Gaelic dialects, then, as in ancient Greek and Latin, there are traces of the existence and use of that "*Shibboleth* of the north" which has disappeared in modern times alike from Greek, Gaelic, and Italian.

There are very few means of ascertaining with any degree of accuracy the original pronunciation of the Celtic races; for there is no existing colony of an unmixed Celtic race, like the Icelanders, retaining the language and pronunciation of the olden time. The peculiar spelling in use amongst the Gael certainly demonstrates a great change in this particular point, and the softening influence, so characteristic of the south, is clearly evident in such modern names as *Tiernay* and *Cremorne*, pronounced, apparently in the days of Adamnan, as *Tigernac* and *Cric-mugdorn*.‡ Amongst the British Celts there was seemingly a difference in pronunciation on one point, resembling very much that existing between the modern French and Italian pronunciation of *gu* or *qu*, exemplified in *guerre* and *guerra*, in *quinze* and *quinto*. Thus *go* and

* *Cæs. de B. G.*, l. 1, c. 16.

† *O'Donovan's Irish Grammar.*

‡ Compare *Adam. Vit. Col.* (*Reeves*), l. 1, c. 43.

gor are synonymous with *gwo* and *gwor*, the same words evidently, only pronounced differently; and the eastern *Ceint* or *Kent*—the same word perhaps as *Ghent*—reappears in the softer form of *Gwent* in Western Britain.* So also the older forms of *Damnon* and *Demet* have softened into *Devon* and *Dyved;* and the name of *Llewarch* approaches its older form, Latinized *Lomarchus*, in the Lancashire name of *Lomax*, in which the *x*, as in Switzerland and Savoy, represents the old *ch*.† In other words, the Cymric pronunciation appears to have been influenced in Welsh by the intermixture of the purer Celts of the eastern coasts and the Lothians with the Silures—the dark-haired races to the westward of the Severn—races probably scattered very widely over the whole western coasts of ancient Britain.

It would appear, then, as if the modern dialects which are called *Celtic* had been influenced, by the causes to which I have alluded, to a far greater extent than any existing Teutonic language; so much so as to suggest the inquiry, What *are* the modern Celtic dialects, and to what class do they belong? Assuming the English as an example of a Teutonic or Northern language influenced by the admixture of other elements, and the French as an instance of a Provincial or Southern language influenced by the presence of a Teutonic element, to which type are the modern Celtic dialects to be referred? Are they, like the English, the speech of the invaders, or, like the French, the speech of the invaded, influenced respectively, and altered, by the intermixture of alien elements and other causes? Do they represent a language originally northern, influenced and altered by contact with southern dialects,

* In the Welsh Dictionaries *Gwent* is "a fair, open region," derived from *Gwen*, "white, fair, beautiful;" *Caint*, "a plain, open country," derived from *Cain*, "bright, fair, beautiful;" evidently, I think, words *originally* from the same source, pronounced differently, just as our *baker* and *baxster*, *brewer* and *brewster*, *weaver* and *webster*. Modern French is based upon the "*Langue d'ouil*," and retains the harder, sharper pronunciation which characterized the northern provincial dialect—the *guaint* rather than the *gwent*, which would probably have lingered in the "*Langue d'oc*" and the southern provincial dialects.

† In names like *Bex*, the *x* is pronounced like the Gaelic *ch*, *Be'h*.

or a language originally southern, with a strong infusion of some northern element? If the latter supposition were correct, if the speech of the older population of the south and west of Europe formed the basis of the modern Celtic dialects, the question arises who were the Celts? or rather, who were the people who introduced the foreign and northern element, whether confining the ancestry of the Druids to their sacred offices, or establishing themselves originally as a sacred and warlike caste amongst a people who subsequently asserted, as a military class, their right to a division of the supreme authority? If this were the case, it is possible that there were no Celts as a northern race, the northern element unquestionably existing amongst that people having been originally *Teutonic*, losing its language like the Franks, the Normans, and the Norse element in Russia, and becoming gradually identified with the Lætic and tributary elements in the united population.

There were certain points of resemblance, indeed, between the two races, which may at first sight lend an appearance of plausibility to such a theory, besides that similarity in personal appearance and in general habits of life which seems to have misled Strabo in his derivation of the name of *German*. The name of *Druides*, applied to the sacred caste amongst the Gauls, resembles most remarkably the old word for *Lords*—*Druhten, Drihten, Drottur*—amongst the Germans and Scandinavians; and it is a tempting theory to imagine the descendants of a race of conquering *Druhten*, of Teutonic origin, confined to their religious avocations—much as the sacerdotal noblesse amongst the Egyptians, and as the Brahmins may once have been at some remote period by the *Kshatrya*, *Shah*, or *Rajah*, caste—by the *Guladach* Γαλαῖαι, or Rulers, an Equestrian order of Gallic descent.*

* As the title of *Ætheling*—or *Odaller*—which originally belonged to every free member of the race, was gradually confined to the noble proprietary, and latterly, amongst the Anglo-Saxons, to the members of the ruling family alone, so *Guladig* (derived from *Gulad* "a country"), which in later times was restricted to the sole ruler of the *Gulad*, may in earlier times have had a more extended meaning, and belonged to a ruling class of

Their religious systems also exhibited certain features in common—the leading features may have been identical without necessarily implying exact conformity in every minute particular—for in his description of the religion of those German tribes with whom he appears to have been best acquainted, Tacitus might almost be supposed to be repeating the words applied by Cæsar to the Gallic faith. A god whom the Romans identified with Mercury was the leading divinity in both systems; a god of craft and subtlety rather than of valour; a god of merchants rather than of warriors; whilst *Thunder* held a conspicuous place in both creeds, whether as *Thor* or *Taran*, as god of the air, and the equivalent of Jupiter. Even assuming, however, the complete identity of the religious systems of both races, the Gauls scarcely derived their faith from the Germans, as must have been the case if the sacred caste of Druids had been originally Teutonic *Druhten*. The traditions of the former people pointed rather to Britain as the source from whence they originally derived their religious inspiration; and it was to that island, renowned for the prevalence of magic lore, and not to the eastern banks of the Rhine, that the Gallic youth were sent to study the mysteries of their faith. Nor would it appear as if *Odenism* had been the original faith at any rate of the whole Teutonic race. The account left by Cæsar of the elementary worship of the Germanic inhabitants of the east bank of the Rhine, in his days, bears not a trace of Mercury worship. Woden was known amongst the Frisons as *Walcher*, or the foreign god; and Thor was the leading divinity of the Northmen, always retaining the place of honour in the famous temple at Upsala in Sweden. "By Niordr, Frey, and the Almighty God," was the most solemn adjuration of the Northman, meaning Thor, not Odin, as the greatest of the divine Triad. Strictly speaking, none of the ruling families of Scandi-

Guladach or *Æthelings*, resembling the "royal tribes," or βασιλεις, so continually met with in the accounts of Herodotus, Strabo, and other early authorities. As the Welsh *G*, or *Gw*, is generally changed into *F* in Gaelic, the Welsh *Gwladig* is perhaps the Irish *F'laith*.

navia seem to have originally deduced their descent in a direct line from Odin. From *Heimdalr* came Dan, the ancestor of the *Skioldungr;* and the *Inglingr*, who once ruled the *Sviar*, and afterwards the Norsemen, traced their pedigree to *Niordr*, apparently the great god, or goddess, worshipped by the Suevi in the days of Tacitus, under the name of *Nertha*. Mercury worship, which was by no means confined to either Gaul or German, for "the kings," or ruling class amongst the Thracians, in the days of Herodotus, were all "children of Mercury," was probably engrafted upon an earlier and simpler faith in both cases.*

* *Cæs. de B. G.*, l. 6, c. 12, 16, 20. *Tac. Germ.* c. 9, 40. *Ackermann's Remains of Pagan Saxondom Pref.*, p. xxi, note 26. *Ad. Brem.*, c. 233 (quoted in Kemble's Saxons in England, vol. 1, p. 337). As Mr. Kemble has remarked, the MSS. of Tacitus read either *Nertha* or *Hertha;* and as amongst the Gael *Tuath* still means "the north," "a country," or "a people," so there was a time, probably, when these words were synonymous. A change in, or a doubt about, the sex of a divinity was not uncommon in the heathen mythologies; the goddess *Mithra*, for instance, whose worship was gaining ground amongst the Persians in the days of Herodotus, appearing at a later period as the god *Mithras*. That *Niord* was once *Nertha* and identical with *Hertha* may, I think, be inferred from the application to him—or her—of the classical legend of Demeter, and her children *Liber* and *Libera*, reproduced in the north as *Frey* and *Freya*, children of *Niord;* the statue of *Frey* at Upsala and his attributes much resembling Liber Bacchus. The existence of this legend in the north is, I think, only another proof of the extraneous origin of much in the northern mythology, and of the truth of Cæsar's notice about the religious faith of the Germans of his age. As *Tuisco*—a near connection, I suspect, of *Tuath* and *Tud*—was the ancestor of the Germanic races, so *Niord* was the forefather of the *Sviar*. *Nertha* was also the supreme goddess of the *Suevi*. The Franks never regarded the Suevi as a strictly kindred or *Theotisc* race, calling them *Alamanner*, or *Aliens*, and their frontier district was known as *El-satz*—Alsace, or the country of the *Al-sættas*. Nor do the Suevi appear to have originally acknowledged themselves to be *Theotisc* any more than the Northmen, who applied the name of *Tydske* to the Germans—originally to the Franks especially, and the Germans of the empire—for the Hungarians know the Germans, not as *Deutsch* but, as *Schwabe*, a name, indeed, which amongst that people is equivalent to the German *Walsch*, and applied to almost any foreigner. *Schwabe*, then, must have been the name with which the Magyars were most familiar in the olden time. The south-western Suevi again never appear to have known themselves as *Deutsch* but as *Schweitzers*. *Sveit* in Icelandic means either "a tribe" or "a country" (*Halderson*), much like the Gaelic *Tuath; Sveitr-madr*, a man of the same tribe or "a fellow-countryman." The South German form of *Sveitr-madr* would be *Schweitzer-man*, or Swiss, and I believe that the *Sui* in Sui-ones and the *Sue* in Sue-vi—words in which the *terminations* only differ—are both traceable to the same root as

I am not inclined, however, to agree with that view of the subject which would attribute a southern origin and southern characteristics to the original Celts, and would account for all those points of resemblance in which they approach the Teutons by inferring the actual presence of the latter people. The original and unmixed Celt would appear rather to have been a member of a northern people, akin to, but not identical with, the great Teutonic and Sclavonian races, and in process of time far more intermingled with both Teuton and Sclavonian than is sometimes supposed. A race whose language, customs, and general characteristics were gradually influenced to a very great extent by their earlier contact, and consequently their greater intermixture, with the people of various origin who, at some still more remote period, spread over the whole or greater part of the European continent. Above all, this would appear to have been the case amongst the western populations who are supposed to be their representatives in modern times, and the real Celtic ancestry of the modern Gael and Cymri, before their intermixture with the "Sassenach" or the "Gall," bore probably about the same resemblance to their original northern ancestry, as the present population of France to the northward of the Loire does to the original Frank of the era of Chlovis.

Sveit, like *Theotisc*, *Cymri*, and *Ga'el*, merely meaning "kindred." Sweden was traditionally regarded as the "Lesser *Svi-thiod*," the greater land of the Sviar lying eastwards beyond the Baltic. Where were the people of the greater *Svithiod?* The northern branch alone crossed the Baltic, gradually becoming the leading people amongst the Gothic "Wendil," Finnish, and other populations of Scandinavia, as Swedes, Danes, and Norwegians; whilst the majority of the population that had once dwelt in the greater Svithiod, moving westwards along the continent of Europe—the followers of those sons of Odin who founded kingdoms in *Sax-land* and elsewhere, according to the old legendary tradition of the *Heimskringla*—were known to the Romans as the great Suevian confederacy, and at length either settled in Southern Germany as *Schwabe* (a name including the Bavarians and Austrians as well as the people of medieval Swabia) and *Schweitzers;* blended with the conquered population of Thuringia, amongst whom they were established as *Adelings* or lords of the land; or carried their name of "Angle" into Britain, where, before the Danish settlements, they formed the dominant Teutonic population of the eastern portion of the island, from the Forth to Watling Street.

Appendix D.

TENURES.

Fixity of tenure in land appears to have been totally unknown in the state of society amongst the Germans with which Cæsar and Tacitus were most familiar. Every year their "Magistrates and Princes"—their elective and hereditary leaders—assigned, amongst the "gentes cognationesque," a sufficient quantity of land for their support, which was distributed in equal portions amongst the community, no difference existing between the allotment of the noble and the lesser freeman. A similar annual distribution is described by Tacitus, who wrote about four or five generations afterwards; for the *Arva*, or lands set apart for cultivation, were changed every year, the great extent of the *Ager*, or land capable of cultivation, the whole of which was occupied in rotation, admitting of this continual change "with cultivable land to spare"—in other words, each portion of the *Ager* was ready for a corn crop, when "its turn" came for cultivation. Hence the necessity for that wide extent of *March* of which the leading German confederacies were so proud, and which preserved the greatness of the community by providing for its inevitable expansion. Wherever such a provision was wanting, the community either emigrated or declined in power, the Teutonic settlements in England affording an excellent example in point, those on the eastern coasts, hemmed in between the sea and their western kindred, gradually sinking into insignificance, whilst the Northumbrians, the Mercians, or *Markmen*, and the West Saxons, with the means of expansion upon their western *Marches*,

rose to be the leading confederacies of the Anglo-Saxon race. In two points the Germans, with whom Tacitus was best acquainted, differed from the description which has been handed down by Cæsar of the same people; in the existence of the *Comites*, and in the recognition of the right of higher rank to greater property; for after a sufficiency of land had been distributed amongst the cultivating class, the allotments were portioned out according to rank. About the composition of this cultivating class there can be little doubt. It must have consisted principally of a body of servile agriculturists, or *Læts*, together with the old, the infirm, and the women, amongst such families probably as had no Læts; and as the bravest and most warlike of the Germans scorned such "servile labour," it is highly probable that the majority, sooner than become actual cultivators, broke off all family ties and dedicated their services as *Comites*, or military followers, to the noble, whose Læts henceforth were bound to support them. A Lætic class of cultivators then, and a wider allotment of land, were evidently necessary for the maintenance of the noble and his Comites, and a different principle from the strict equality of the community must have gradually arisen out of the mutual connection of these classes. The right of property in the land centred in the noble—the *princeps*, *cyning*, or head of the lineage —burdened, however, with the necessity of supporting his Comites; and long after the old hereditary right of every free member of the community to an equal allotment of land for his support, had passed into the fixed, hereditary, and divisible *Allod*, and dwindled into the "Alleu-Roturier," the freeholders themselves, who had neither risen into *Comites* nor sunk into serfs, remaining almost in the position of *Læts*, "noble tenure" still exhibited certain features of this shifting state of society, and the hereditary right of the *Antrustion* or *Gesithcundman*—the representative of the earlier *Comes*—consisted in his right to an *uncertain* and renewable benefice, or life-grant—to the support of his patron—rather than in a hereditary and inalienable claim upon any particular spot of land. A dif-

ference must have naturally arisen in the conquests carried out within the settled provinces of the Roman Empire under these two opposite systems; in the case of the community the conquered lands remaining in the possession of the whole people, to be allotted according to their individual wants, whilst, wherever the invaders consisted of a *Cyning* and his *Comites*, the land became the property of the *Cyning*, burdened with the necessity of supporting his followers.*

At the opening of the present century, a district in Friesland known as the *Theel-land*—a name probably meaning, like that of *Dæl* in the Jutland code, *allotted* land—was still composed of *Theels* and common land. Every *Theel* was of equal size, belonging to a separate owner, who was known as a *Theel-man* or *Theel-boor*, and who was incapable of holding more than one *Theel*, or of selling or alienating his property. The common land belonged to the community at large. On the death of the Theel-boor, where the family consisted of more than one son, the youngest succeeded; failing male heirs, the youngest daughter; failing heirs, the Theel reverted to the community; and as the elder sons grew up they were provided with Theels out of the common land. Brocmerland and certain other departments were divided into quarters or *Farding-dela*, the union of the four *Farding-dela* constituting a *Liodthing*. The free proprietors of every *Vill* chose a *Redieva* or *Grietman*, known of old as an *Asega*, these representatives of the *Vills* choosing a president for the *Farding-dela*, one supreme *Asega* or *Judex* assuming the lead in the *Liodthing*, which was held at a place of meeting known as *Upstalboom*, and in which, in the olden day, the *Hovedlinge*, or nobility, were upon a footing of perfect equality with the *Meen-mente*—the *Gemeinred, Yeomanry*, or lesser freemen. Wherever, however, these *Hovedlinge* were to be found, they had become the *hereditary* instead of the *elective* judges of their respective districts, which were occupied by a rent-paying tenantry in the place of freeholders.†

* *Cæs. de B. G.*, l. 6, c. 21, 22. *Tac. Germ.* 15, 20, 25, 31.

† An able and interesting description of the Frison customs, from the pen

The custom of the *Theel-land* approaches very closely to that system of perfect equality described by Cæsar, of which it may be regarded as the latest development. The annual distribution of the land, indeed, had long ceased to be carried out in a state of society that had been fixed and settled for centuries, but the same principle of equality still existed, each member of the community evidently retaining a right to a certain stated and equal allotment of the land, of which the *property* was vested inalienably in the people at large—whilst the whole community was still in theory one *kindred*, governed by laws and customs established by the common will, and administered, as in the days of Tacitus, by the elected delegates of the whole society. Knighthood and military tenure—the condition of the *Comes*—were still regarded in the feudal era as a derogation from the dignity of the free proprietor, though, wherever a nobility existed, the hereditary had replaced the elective principle, and a rent-paying tenantry, representatives in many respects of the old Lætic class, stood in the place of the freeholders.

As in the tenures and customs prevailing at so recent a period in certain parts of Friesland, it appears still possible to trace the latest development of a state of society based upon the principle of the community; so in the ancient laws of the Burgundians is presented, perhaps, the earliest example of a code adapted to that other phase of society amongst the people of Germanic origin, in which the community had been replaced by the king. Two separate tenures are plainly traceable, the allotment and the royal grant; the "terra sortis titulo," or "munificentia nostra, acquisita." The latter was possessed absolutely, "ex integro cum mancipiis," and held by *Roman* law, or by charter, passing to the male heirs only, but apparently very much in the power of the possessor. He who held

of Sir Francis Palgrave, is contained in the *Ed. Rev.*, vol. 32, 1819. It may be doubted how far the *Theel-land* "custom" could always meet the natural expansion of the original *Cyn*, though the exclusiveness of the system would tend to limit the number of claimants on the land, for no *alien* could acquire a *Theel*.

a royal grant was obliged to resign his allotment, and it seems to have very much resembled the Anglo-Saxon *Bocland*, or the grant of *Fiscal* land, for which Marculf has provided a formulary, and which with full privileges and "la haute justice" constituted the "Franc-alleu-noble."* The allotment was held "jure hospitalitatis," the holder being quartered upon the *Roman*, and claiming two-thirds of the land and one-third of the *mancipia*, or stock; and it is described on one occasion as "hospitalitas delegata," or an assignment of free quarters rather than an absolute grant of property. It could hardly indeed have constituted an absolute property in the land, like the *Allod* in the historical period of the early Frank kingdom, for the *sors* and the *possessio* are clearly distinguished, and it is laid down in one law, that if a *Barbarus* or Burgundian—for the *alien* was not thus privileged—held land for fifteen years, *sine tertiis*, he possessed it absolutely as his own, whilst in all the allotments the *tertia* were reserved for the *Roman*, or, in other words, for the *Fisk*. Whenever a dispute arose about the boundaries of an allotment, the Burgundian was strictly prohibited from interfering; the contest was to be carried out by *Roman* law between the *Romans*, the real *proprietors* of the lands in dispute, and after it was settled, the Burgundian was to arrange with his "*host*." The possessor of a royal grant, however, held by *Roman* charter, and was entitled to proceed by *Roman* law, which recognised a proprietorship in the land, Burgundian custom vesting this proprietorship in the king, and only recognising in the people a right to "hospitalitas delegata," or an assignment of free quarters.† It may

* *Leg. Burgund*, tit. 1, sec. 1, 3, 4; tit. 54, 55. *Form. Marc.*, l. 1, 17 (*Canc*).

† *Leg. Burgund*, tit. 54, 55, sec. 1, 2; tit. 79, sec. 1; tit. 84, sec. 1, 2. The property acquired by fifteen years' possession *sine tertiis*—without paying rent—differing from the royal grant and the allotment, would seem to have resembled the *Franc-alleu-roturier*, though there is no appearance of a *roturier* character attaching to it as yet. The *hospes*, who in early days was the *host*, supporting an alien master upon his property, in process of time, as the master became a *proprietor*, sunk into a *tenant*, and Palsgrave in his "Eclaircissement de la Langue Francaise" (p. 279), written at the opening of the sixteenth century, renders the English word *Tenaunt*, by the French *Hoste*. The *Hospites* therefore evidently be-

be gathered from the wording of the following passage—"At the time when *our people* received the third of the stock and two-thirds of the land, *we ordained* that he who had acquired, by the liberality of ourselves or our predecessors, the land and stock (a royal grant) should not demand the third of the stock and two-thirds of the land (the allotment) in that locality in which hospitality had been assigned to him (ei hospitalitas fuerat delegata)"—both that the allotment was the right of every Burgundian, whilst the royal grant was conferred only upon the objects of the royal favour; and that whilst some of the latter had been made by former kings—were grants for a certain number of lives, or in perpetuity—the allotments had been distributed solely by the reigning monarch; in other words, it would appear as if the allotment was an assignment of free quarters made upon the accession of the king, resembling the benefice rather than the allod (though not identical with it), and reverting to the crown on the death of the royal granter, to be renewed by the succeeding king, or replaced by an equivalent "delegation."*

Such was the practice in Sweden seven centuries after

came, in process of time, an irremoveable tenantry. The original Latin word has a similar double signification of *host* and *guest*, pointing evidently to similar changes in the state of society amongst the Romans.

* *Leg. Burgund*, tit. 54. The various "holdings" may be described in a general way as—1. The *Allotment*, sometimes known as the *Sors*, a grant of land which every freeman could claim, whether in a community or a kingdom. Originally annual, it was always more or less of a shifting nature until it grew into, 2. The *Allod*, or fixed private property, either representing the allotment rendered permanent by length of possession, or a permanent grant at the time of the original division of the land. The *Alleu-noble* was the grant of crown-land—salica terra—held by royal charter. All allodial land was originally free from all obligations except military service. Its equivalent amongst the Anglo-Saxons in many respects was *Boc-land*. 3. The *Benifice* or *Læn*, originally the grant rewarding the services of the "miles emeritus," and representing the allotment of a king to his Comites—his Antrustions or Gesithcundmen. After a time it was *relevé*—taken up—by the son of the deceased Antrustion, at first as a privilege, gradually as a right, until, as the allotment had grown into the allod, so the Benefice grew into, 4. The *Feud*, or hereditary Benefice granted by royal charter, and inalienable as long as the duties and obligations entailed upon it were performed. It differed from the *Alleu-noble* principally in being liable to Relief, Aids, Wardship, and other obligations unknown to the allodial period.

the date of these Burgundian laws. The three *Folklands* of the Upland kingdom, *Ten*, *Eighteen*, and *Fourteen*, first elected the king, the Upland *Laghmadr* first proclaiming him, and the "Lawmen" of the six other kingdoms of the Swedish "Heptarchy" repeating the same ceremony in succession. A royal circuit followed through all the provinces with *grith* and *gislas*—peace and hostages—after which the king was entitled to the *Upsal odha*, or crown lands, with other royal privileges, and *to give læns to his Thanes*. The *læn*, in principle, fell into the crown on the death of the king, to be renewed under ordinary circumstances by his successor; and the Burgundian allotment appears to have been of a very similar nature. Every child had a claim upon it—the grand-children, also, where the son predeceased the father—in other words, every member of the family had the same claim upon the support of their natural "senior" as the head of the family had upon the theoretical senior of the whole race—the king; and originally it seems to have been inalienable, though by a later enactment, where the holder had either *sors* or *possessio* elsewhere, after distributing their proper shares to his children, he might dispose of the rest as he chose. Nowhere is it more clearly shown that the right of property in the whole Burgundian territory was vested permanently by "Burgundian custom" in the royal race—the royal grant in perpetuity, held by *Roman* law, being evidently a *Roman* innovation—than in the enactment of Gundobald limiting the allotment to half the land without the stock; but the right of the Burgundian freeman to his "living" was as indisputable as that of the king to the "fee-simple" of the kingdom, and the individual member of the "community" was not more secure of his portion of the common land, than was every free member of the Burgundian, or Gothic "kingdom," of his allotment out of the royal property.*

* *Leg. Upl.*, 1, 2, 3. *Leg. Burgund*, tit. 24, sec. 5; tit. 51, sec. 1. *Addit.*, 2, sec. 11. The king's property in the land was strictly "beneficiary," and he could not alienate an acre and convert it into private property, passing in perpetuity, without the consent of all who had an interest in the distribution of

The true Germanic principle then respecting property in land would appear to have vested it either in the community or in the head of the lineage, every free member of the society having a hereditary and inalienable right to be supported out of the common or royal property. The grant in perpetuity was thoroughly *Roman*, founded upon *Roman* principle, and guaranteed by *Roman* charter; but wherever the community merged in a kingdom the whole of the unallotted land must have lapsed to the crown, becoming *Fiscal* rather than *Folk*land; and as from that time it was distributed only amongst the *Antrustions* and *Gesithcundmen*—the royal *Comites*—the latest allotment to the *Leudes* necessarily became *final*, and thus the *Alleu-Roturier* acquired the character of a fixed property. And though the Germanic principle was totally opposed to taxing the freemen, with the aggrandizement of the royal power the royal prerogative increased, and ere long taxation was extended from the *Læt* to the *Leud*. In the Burgundian and Visgothic kingdoms, however, in which, from the date of the original conquest, the land had always been the property of the king, the original allotment to the Leudes resembled a grant of free-quarters, or a benefice, the Roman remaining in the position of a Lætic proprietor, burdened with the support

the land—originally the whole free population, and at a later date, the whole *gesithcund*, or noble class, represented amongst the Anglo-Saxons by the *Optimates* or *Witan*. Originally, when the German first received his arms, and was no longer reckoned as "domus pars, sed reipublicæ," the duty of providing for him would naturally fall upon the "res-publica," as in the case of the elder sons of the Theelboor; but after the allotment became more or less permanent, this duty must have devolved upon the father. With this claim upon the father to provide for his sons as they grew up, the Israelites were evidently familiar, from the words in the parable of the prodigal son, "Father, give me the portion of goods that falleth to me. And he divided unto them his living." *St. Luke*, c. 15, v. 12. Amongst the same people, according to the Mosaic institutions, private property in land could have only lasted for fifty years; for the *Jubilee*, when "ye shall return every man unto his possession, and . . . . unto his family"—*Levit.* c. 25, v. 10—could only have been carried out by redistributing the land every fifty years amongst the representatives of the original possessors. As the first allotment was "by families"—*mægs* or *clans*—this law would render it optional to every Hebrew at the time of the Jubilee to return to his native district and demand his *share* from his *mæg*.

of the royal Leudes, and with the additional necessity of paying taxes to the king, whilst the free Burgundian was at first unable to acquire property in perpetuity except by royal grant. Had either of these kingdoms remained long enough in its original state for the complete amalgamation of the two races, wherever an allotment of this description became the hereditary possession of one proprietor, unlike the originally untaxed allod, or the benefice held by military service, it would have been liable to a tax—held by payment of the dues incidental to the "Roman third"—and would have thus assumed the character of the tenure known in the feudal era as *Fee-farm*.*

The Celtic tenure of land appears to have been in strict accordance with the principle of "the kingdom," bearing a close resemblance to the older Burgundian "custom" before the introduction of the Roman principle of the royal grant by charter. The property of the land was vested in the head of the lineage, burdened, as usual, with the support of his kindred and *Amasach*, the entire dependance of the latter upon "the noble" being traceable even in the description of the Gauls left by Cæsar.† The whole theory of the Welsh landed system is based upon this principle, the twelve *Maenawls* into which every commot was divided being portioned out between two royal officials, six *Brcyrs* or nobles, and four families of *Alltudion*, or *Fiscalini*, a distribution which implies that the "fee-simple" of the land was centred in the *Brenhin*, or king. The *Gwrdha*, or man of property amongst the Welsh, was apparently on a similar footing with the head

* That this was actually the case amongst the Visigoths seems probable from an addition in Spanish to a law of Chindaswind, A.D. 642-53, which enacted that "donationes regiæ potestatis," or "regalis munificentiæ," should be permanent and hereditary, "e que pague los tribudos que deven ser fechos de la eredat." *Leg. Vis.*, l. 5, tit. 2, l. 2 (*Canc.*) From this law, and from another, "Sortes Gothicæ et Romanæ, quæ intra quinquingenta annos non fuerint revocatæ, nullo modo repetantur," l. 10, tit. 2, l. 1, it is evident that amongst the Visigoths originally "no estate passed" in perpetuity, either by a royal grant or an allotment. Absolute private property in land must have been unknown amongst that people long after it was familiar to the Burgundians and Franks.

† *Cæs. de B. G.*, l. 6, c. 10, 12. For the *Amas* or *Ambactus*, *Vide Appendix B*, p. 217, note.

of the lineage amongst the Irish, who was bound by the law of Tanistry to grant to his immediate kindred allotments for their support, by which "no estate passed."* Each of the *Aelodeu*, or members of the family, which included all within the limit of three generations, was entitled to a settled share in the joint property of the kindred, all remaining over being either waste land belonging to the family in common, or, amongst the Gael, falling to the lot of the Senior; the whole system being simply a repetition on a smaller scale of the distribution of the land amongst a tribe, or people, the Welsh custom resembling the principle of the community, the Gaelic that of the kingdom. As each generation died out, or upon the death of the Senior, a fresh division took place, in which none shared who were beyond the limits of the *Aelodeu*, or the third generation; the former rule, which appears to have attached to an earlier state of society, explaining the succession of one brother to another, precedency belonging to him who was nearest to the original stock, or *Bon*—as Bruce argued in his claim upon the Scottish crown—a similar principle appearing in the division of the Frank Empire under the Merovingian and Carlovingian dynasties. The same principle was evidently in operation in Scotland, the *Leges inter Scottos et Brettos* limiting the extent of the Thane's kindred to the third generation, all within that limit, like the Welsh *Aelodeu*, being entitled to share in the joint-occupancy of the family property, all beyond it, who were not classed as *Ogtiernus*, or lesser proprietors, only being entitled to "Villein right." The fourth in descent was no longer included in the redistribution of the ancestral property, retaining apparently, in early times, the paternal allotment as a separate and fixed inheritance, and forming the nucleus of the Welsh *Boneddigion*, answering to the *Ogtiernach* amongst the Scottish, and the *Saertach*, or *Brugaidhs*, amongst the Irish Gael. The Brugaidh was originally the member of the Irish clan who possessed a *Brugh*—the Householder, or Bonder,

* *Ware* (*Harris*), vol. 2, c. xi., p. 72. The passage is quoted in *Appendix N.* (Thanes).

standing in the same relationship to the head of the family as the Scottish Ogtiern to the Thane; and in all these cases it would appear as if the member of the kindred who was no longer connected with the head of the race within the degree necessary to insure him a "noble holding," could claim his *Baille*, or *Vill*, as a fixed and final allotment.* A similar principle is plainly traceable in the old Norman "Tenure par parage," the junior members of the family, to the sixth degree, holding by joint occupancy under the eldest of the race, exactly as in the Irish law of Tanistry, the eldest son of the *Senior* standing in the place of the Irish Tanist, and the seventh in descent holding "that which had previously been held by parage," by homage, or as the senior's vassal—he was no longer a *Tighern* but an *Ogtiern*.† It would appear, indeed, that

* *Wootton's Welsh Laws*, l. 1, c. 4; l. 2, c. 12. *Battle of Magh Lena* (*Celt. Soc.*), *Appendix* 2. For "Leges inter Scottos et Brettos," *Vide Appendix E.* (*Wergilds*). The original *Brugaidh* must be as carefully distinguished from his later type, as the *Twyhyndman* of early days from the feudal *Villein*. It was the introduction of the charter amongst the Scots which reduced all beyond the third generation, who had not holdings as Ogtierns, to the rank of churls, or *Villeins;* for, at an earlier period, they would have all ranked as *Boneddigion*, as amongst the Welsh, without reference to holding land. In Ireland, as everywhere else, there was a continual struggle to convert the *Brugaidh* into a *Biotaigh*—a *gafolgelda*, or rent paying farmer. In the account of the Visitations of the Cowarbs of St. Patrick and St. Columba in 1150 (*A. F. M. O'Donovan*), the four contributing classes besides the *Righ*, or *Oirrigh*, were the *Toshach*, or captain of the district (answering to the Thane or Maer), the *Saertach*, or Freeholder, the *Biotaigh*, or Gafolgelda, and the *Diomain*, rather vaguely rendered *Villein*. The word seems to mean "the man without property," rather an unfavourable subject for the Cowarb's steward certainly, but he was probably the lowest member of the class who were ordered by the law of Alexander the Second, according to the quantity of cattle they possessed, "to take land and plough it," or to work with manual labour for their lord's benefit; and there was a class possessing property, but without "propriam possessionem terrarum," which was bound by Charlemagne's laws to furnish a certain degree of military service. (*Act. Parl. Scot. Stat., Alex. II.* 1. *Pertz Leg.*, vol. 1, p. 149, *capit Carl. Mag.*, sec. 2.) From the proportions contributed by the *Saertach* and the *Biotaigh* it would appear that as a class the latter were wealthier, or perhaps more heavily taxed, than the former.

† *Grand Coutumier*, c. 30. The whole passage is worth quoting—"Tenure de parage est quant cil qui tient, et cil de qui il tient, doivent par raison de lignage estre pers es parties de l'heritage qui descend de leurs ancesseurs. En ceste maniere tient le puisne de l'ainsne jusques a ce quil vienne

wherever the principle vesting the entire property of the land in the head of the lineage was recognised, he who was removed beyond a certain degree from his chieftain or *Senior*, ranked as a Friling, Ceorl, or Boneddig—as a member of the Commonalty. All the Celtic holdings, which were known as *Gavels*, were liable to a certain acknowledgment, much resembling originally the necessity incumbent upon the holders by the *Veitzla* tenure amongst the Northmen—and probably the *Conviva Regis* amongst the Franks and Burgundians—of entertaining the king upon his winter progress, which, in a more settled state of society, gradually became a rent, answering to the feudal *Fee-farm* or *Frank-farm*. All hereditary right throughout a district held in this manner depended upon a certain degree of connection with the head of the lineage, or, after the complete establishment of kingly authority, with his equivalent, the royal official—hence the tenacity with which the members of such a state of society clung to their pedigree—and if conquest or forfeiture deprived the "Senior" of his *Duchas*, or allodial right, the whole kindred sunk into the position of *Daer-Claus*, exchanging the condition of Duchasach, or Free *Heritors*, for that of a Lætic tenantry, or *Native-men*, whose sole privilege consisted in their "inborn" right to remain upon the land.

Traces both of the "community" and the "kingdom" are recognisable amongst the Anglo-Saxons. When Beda

au sixte degre du lignage, mais dillec en avant sont tenus les puisnez faire feaulte à l'aisne. Et en septieme degre et dillec en avant sera tenu par homage ce qui devant estoit tenu par parage. Laisne peut faire justice sur ses puisnez pour les rentes et pour les services qui appartiennent aux seigneurs, et non pas pour autre choses fors en trois cas sans plus pour tout qu a este fait a sa personne, a son aisne fils, ou a sa femme." In the sixteenth century the Tenure par parage was confined in Normandy to the succession of heiresses, and it is described in the *Coustumes du Pais de Normandie*, c. 127, as the division of a noble fief between heiresses and their representatives—probably the *Membra Loricæ*, or parts of the "fief de hauberk." It was a relic of the old Norwegian tenure, the eldest born being probably the *Holder*, the rest of the kindred *Odallers* under the older system. It was not apparently carried across the Channel by the Anglo-Normans, or only survived for a short time, though there are traces of it in the *Statute of Ireland*, 14 *Hen. III.*, in which it is laid down that when heiresses held *in capite* "habuimus homagium de omnibus, et singula earum teneat in capite," but in all other fiefs the eldest heiress represented the rest, as in *parage*.

laments the misappropriation of the unallotted land by the Northumbrian kings, through which none was left for the sons of noblemen and of Thanes who had served their time (militum emeritorum), he implies both the power of the kings to dispose of the land as their own, and the claim of the noble and the military classes upon their support; whilst, from his expression elsewhere that Benedict Biscop had received a *Læn* in accordance with his *rank*, it may be inferred that the usual distribution was made "secundum dignationem." Long before the era of the venerable historian, "custom" amongst the Angles must have vested all property in the land in the royal race—the *Æthelings*—and wherever indeed the king and his immediate family, instead of a noble class, bore the title of *Æthelings*, or sole proprietors of the land, as amongst the Anglo-Saxons, it may be safely set down that the state of society approached the Gothic rather than the Frisiac, resembling the kingdom rather than the community. And so thoroughly was the translator of Beda's history imbued with this principle that he invariably renders *possessio* by *Bocland*, as if it was totally contrary to his ideas of law and custom that property in land could be acquired in any other manner than by *Boc*, or charter from the king.*

* *Beda, Epist. ad. Ecgb.*, sec. 11, 12, 13; *Vit. St. Ben.*, sec. 1. From another passage in the *Hist. Ecc.*, l. 4, c. 22, it is evident that there had long been a distinction between the *miles*, always rendered in the Saxon translation "Cyning's Thegn," and the *rusticus*, or "folclice man." "Timuit se *militem* fuisse confiteri; *rusticum* se potius et pauperem atque uxoreo vinculo conligatum fuisse respondit; et *propter victum militibus adferendum* in expeditionem se *cum suis similibus* venisse." As military service was more or less incumbent upon every *proprietor*, the *Folk*, as a class, could scarcely have been proprietary. "Twelf boclande æhte" is the translation of the "duodecim possessiones prædiorum" of Beda, *Hist. Ecc.*, l. 3, c. 24. There is no other expression to be found in the Anglo-Saxon language for permanent private property in land; for *Æthel* could only belong to *Æthelings*, a title confined to the royal race in historical times, and hardly conveyed the modern idea of private property. The *Folkland* was the king's *Æthel*, but never his private property until converted into *bocland*. *Yrfe*, or inheritance, stood for cattle and slaves, *Mancipia*, or stock, as distinguished from the land, and it was only in later times that the expression *Yrfe-land—land* of inheritance—arose. Benedict Biscop did not inherit his land, nor did he bequeath it to any heirs when he became an ecclesiastic. He received

It is upon the eastern—the earliest settled—coasts that an approach will be found to the old community, especially amongst the Kentish men, or rather the population of East Kent, known in Domesday as the men of the Borh, Est, Lymne, and Wy Lathes, amongst whom allodial tenure was still existing at the date of the Conquest, though the *Allodiarii* were numbered in the survey amongst the Villeinage.* Little is known of Kent before

it in right of his noble birth, held it by military tenure, and resigned it to the king when he entered the church. It was a *Læn*, a reward—such is the old meaning of the word in Beowulf and Cædmon—or benefice for military service. The original *Sors*, as appears to have been the case amongst all the German tribes, was not permanent, but renewable—the right was vested in "the blood"—and it never seems to have passed into the phase of a fixed and inalienable private property amongst the Angles and the West Saxons, at any rate, before the introduction of the Roman principle of the charter, out of which arose *Bocland*. As the inheritance of the Gesithcundman was the right to receive a *Læn*, in return for military service, in proportion to his birth, so the inheritance of the Ceorl—at least the Wessex Ceorl—seems to have been the *home*, and a right to share in the privileges of the vicinity; for by Ini's law, confirmed by Alfred, the Ceorl's heir, if a minor, was "fostered" by the mother, whilst the kindred took care of the *Frum-stol*, or his father's dwelling, until the minor was of age (*Ini* 38). There is not a word about his inheritance in land: when he came of age he *shared* with the rest of his "neighbourhood"—hence his name of *Geneat*, for the *Geneat* was a joint occupier or sharer, not a proprietor, and in Beowulf the attendants and companions of the great man are often called his Hearth-*geneats*, or his Board-*geneats*, the *sharers* of a hearth or board which they did not own, but had a claim upon. The Kentish freeman was differently situated; during his minority the paternal kindred held his *feoh*—his *property*—giving a *borh*, or security, that he should receive it when of age, and consequently allodial property existed in Kent, all the *Gavellers* holding in *allod* (*Hlot et Ead.* 6). The privileges of *vicinity* were acquired by undisputed residence for a year and a day—a rule apparently universal amongst Celts as well as Teutons—and in Alfred and Ini's time the consent of the king's Ealdorman was required before his *Shire* could be left (*Ini* 39, *Alf.* 37). The Ceorl was fast becoming *adscriptus glebæ*, and he was known soon afterwards in the north as *Fær-bena*, apparently meaning the man who could not *fare*, or "go where he willed"—the great mark of the Freeman—without permission (*N.P.L.* 50, 53). *Far-ban* in Icelandic is explained by Halderson as "prohibitio abeundi."

* *Domesday*, vol. I, p. I. There seem to have been Allodiarii, or Gavellers, in other parts of Kent—totius comitatus—but as a class they only remained in East Kent. In West Kent the Survey notices a number of great proprietors "with sac and soc;" in East Kent none. There was probably much the same difference between the Borh-*wara*, the Lymne-*wara*, and the Wy-*wara*, the allodial "Men of Kent," and the *Seattas* of the west, as between the Frankish Rip-*uari* and the *El-Sættas* of Alsace. *Wara*, in fact, seems to have been only applied to *Ingenui*.

it appears as the leading kingdom amongst the Saxon and Jutish confederacies to the southward of the Humber. London was in the territory of the Middle Saxons, but at some remote period the East Saxons obtained a predominance over Middlesex, and its *Suth-riki*—the modern Surrey—which afterwards passed to the Eastern Jutes; for the first Bishop of London, who was regarded as the spiritual head of the East Saxons, was appointed by Ethelbert of Kent.* From the Jutes the pre-eminence was transferred to the Angles, and when Wini bought the bishopric of the East Saxons he purchased it of a Mercian king; and in the course of the following century Offa granted land in Kent "*de proprio jure*," and denied the right of the Jutish king to grant *Bocland*—the kingdom after his death becoming a mere appanage of the royal race of Mercia, until West Saxon finally supplanted Mercian *Æthelings* as kings of the district.† In alluding to the conquests of the Northumbrian Ethelfrith, Beda describes him as either driving out the *Wealh* from the land, or reducing them to the condition of tributaries, a passage rendered by the translator "to gafolgyldan gesetta . . . oththe of heora lande adraf,"‡ and as the tenure peculiar to Kent long continued to be *gavel-kind*, the conquest must have been of the milder description—unlike that of Ceadwalla over the South Saxons and the Isle of Wight—and when the Kentish king lost his right to grant *bocland*, the Kentish ceorl must have shared in the downfall, becoming a *Gafol-gylda, Gaveller*, or taxed allodial proprietor. From the existence at the period of the Norman conquest of a taxed allodial and roturier class, and from the division of the Kentishmen in the days of Ethelbert into Eorlcund and Ceorlcund, with the absence of the Gesithcundman from their early laws, it may be gathered that at some early period the

* *Beda, Hist. Ecc.*, l. 2, c. 3.

† *Beda, Hist. Ecc.*, l. 3, c. 7. *Cod. Dip. Sax. Æv.*, No. clv., cxcv. "Quasi non liceat Ecberto agros heredetario jure conscribere" are the words.

‡ *Beda, Hist. Ecc.*, l. 1, c. 34. This passage seems to show the meaning of the *Seatta*—the man to whom the land was *geset* or *let;* a freeman, but not a freeholder, or free proprietor. Seatta also means, in a general sense, an inhabitant or settler.

Kentish Jutes were governed upon the principle of the community.*

It was customary amongst the Frison Theel-boors for the youngest son to succeed to the paternal home, the elder brothers receiving Theels out of the Common land, and the succession of the youngest heir was not peculiar to the Theel-land but in general use throughout the rest of Friesland. From the time when the Gesithcundman replaces the Eorlcundman amongst the Jutes in the laws of Wihtred, it may be safely assumed that no more allotments were made to the Ceorls from the *Folk-land*; and accordingly in the Kentish custom may be recognised the application of the Frison principle to a *fixed* inheritance. Lands and tenements held by the custom of Gavel-kind were equally divided amongst the heirs, but the *hearth*, with forty feet around, and the roof, belonged to the

* The "Customs of Kent," a description of Gavelkind, dated 21 *Edw. I.*, will be found in *Lambarde's Perambulation of Kent*, ed. 1596. The *Gaveller* in King Edward's time was not liable to "knight service," or the "wager of battle," but to "rent, coyne, and victual," and "plough-service." For felony he lost his life and his goods escheated to the king, but his land reverted to his heirs; hence the old saying, "the father to the bough, the son to the plough." Absence from his land, however, for a year entailed outlawry and forfeiture, though he could re-instate himself by paying nine times the amount of his defalcation (the *novigeldum* so often met with in the old laws), and five pounds for his *Wer*. This exactly tallies with the entry in Domesday, "si abierit domum non apprehensus sive divadiatus—without a *wed* or pledge—minister regis eum sequetur et c. solidos—five pounds, his *Wer*—emendabit." Practically, therefore, he was up to a certain point *adscriptus glebæ*, but he differed from the *Nativus* or inborn Villein, in being the proprietor of his land—*alodiarius*—which he could sell without license from his lord, always "saving the rents and services"—the buyer must be capable of "ploughing and paying." Of the various derivations which have been hazarded for the word *Gavel-kind* two only are worth noticing, one deducing it from the Anglo-Saxon *gafol*, tax or tribute, the other from the Welsh *Gavael* or *holding*. Both are probably right, for the word that appears as *Gafol* in Anglo-Saxon, and *Gabelle* or *Gavellum* in French and Franco-Latin, is untraceable, as far as I am aware, in other Teutonic languages, and probably passed in each case from the language of the conquered into that of their conquerors, meaning originally "the land-tax, or tribute, levied from every tributary holding." There was a time when the *Hyde* and its equivalents, whether *Læn* or *allod*, was the untaxed holding of a free Teuton, the *Gavael* marking the tributary *Roman* or *Wealh*. *Hydage* was an imposition of later years, pointing to a change in the condition of the once untaxed classes.

youngest son, who was thus placed in the same position as the "Senior" amongst the Irish Gael; the "holder of the land" amongst the Angles and Werns; the heir chosen by his brethren or co-heirs to hold the benefice by old Imperial law; the eldest born amongst the Normans holding *par parage;* and the youngest son amongst the Welsh by the Cymric custom, supposed to have been confirmed by Howel Dha.*

The custom assigning either the absolute succession, or the precedence amongst the heirs, to the youngest, was by no means confined to the Frisons, the Kentishmen, and the Welsh, for under the name of *Maineté*—the succession of the *Maisné* or minor-natu—it was widely prevalent throughout Picardy and Artois; and in many parts of

* *Lambarde. Battle of Magh Lena* (*Celtic Soc.*), App. 2. *Leg. Angl. et Wer*, tit. 6, sec. 5. *Lib. de Ben.*, sec. 76. *Leg. Wall.*, l. 4, c. 147 (*Wootton*). "To him who inherits the land belongs the *Byrnie* (vestis bellica) and the duty of avenging his kinsman and paying the *wer-gild.*" Such was the law of the continental Angles, and—with due allowance for the changed state of society in 1584—it will be found much the same in principle as that which regulated the prerogatives and obligations of the Irish *Sinnsear*—Senior or *Ealdor* (*Battle, etc.*, p. 186)—who provided for his kindred, for whom he was responsible, and retained the rest of the property with all the duties and privileges of his "seniority." This, in other words, is the principle of "the kingdom" on the smallest scale, and a very similar system was introduced, apparently, by the Anglian *Æthelings* into their island home, and probably by the majority of the real Saxons also. The property of the Irish *Senior* in the land seems to have been known as possession by *sinn-searacht*, or seniority, a sort of *beneficiary* possession subject to a provision for all the kin (*Do.*, p. 181). If this provision was "a perpetual division," the remainder became the absolute property of the Senior and his immediate family. When a community passed into a kingdom, some such "division in perpetuity" took place either practically or theoretically, the free proprietors retaining their allotments as *allods*, and the rest of the land remaining the property of the king and his "family"—his kindred and *Gesithcundmen.* When the division was not in perpetuity, it was a "co-occupancy" only, and strictly "beneficiary," and evidently the *gavel-kind* division was generally of this description, from the mention of "the hearth and forty feet around;" in other words, the principal room, known in old Scottish law as the *Flet*, a word of common occurrence in the Anglo-Saxon laws. A house occupied in this manner may have been the *Bold-getal*, "share-house" of Alfred's laws. Though the succession of the eldest was the original rule amongst both Germans (*Tac. Gem.*, c. 32) and Gael, the *Senior* was long elective, though, probably, the eldest was generally chosen. The old Germanic principle regarding property in land may be described, then, as that of co-occupancy rather than of absolute private property.

Germany the property of the peasant formed an indivisible *majorat* entailed upon the youngest son, who was bound, however, to give certain portions to his brothers and sisters.* The absolute succession of the youngest was known in England as *Borough-English*—a name probably derived from its contrast with the Norman custom, or *Borough-French*—and is principally traceable upon the eastern coasts, or in the earlier settled districts. Out of 319 manors enumerated by Mr. Corner in which this custom prevailed, Sussex alone furnishes 136 examples, the East and Middle Saxons 53, East Anglia 96, and Wessex only 12, out of which 9 are in Hampshire, the remaining 23, with the exception of a solitary instance in Kent, being scattered about Mercia or along the frontiers of Wales. Wherever this custom is found, it is invariably *Roturier*, its prevalence to any extent as the general usage of a certain district—for from its occasional occurrence no inference can be drawn—seeming to point to the existence in that quarter at some earlier period of a class of Roturier proprietors, representatives of the *Ceorl-cundmen* of a still earlier community.†

* *Coutumes locales du Baillage d'Amiens*, quoted in Mr. Corner's "Custom of Borough English," and de Tocqueville's "*Ancien Regime*," etc., p. 378, n. As the latter does not give his authorities, I cannot say in what part of Germany these properties most abounded.

† The succession of the youngest heir is probably to be traced to the old custom amongst the Germans to which Tacitus alludes in *Germ.* c. 13. No one was privileged to bear arms until "the State" had approved of the candidate, an indirect proof that the right of every freeman to bear arms was not acknowledged amongst the Germans except by permission of the State, and subsequently of the king—hence *Cyning's-thegn*, for soldier—when the recipient of arms, no longer "pars domus" became "pars reipublicæ," and, as such, undoubtedly entitled to his support from "the state;" his *Læn* or allotment out of the common lands. Hence originated the connection between land and military service. This old principle applied to land is plainly traceable in the custom of the Theel-land, the elder sons of the Theel-boor, as they grew up, receiving allotments of land as their ancestors had once received arms from "the state," or community, each thus becoming "pars reipublicæ," the youngest only remaining during the lifetime of his father in a subordinate position as "pars domus." After the allotment became fixed and final, the same principle was carried out within the narrower limits of a permanently settled inheritance; and, in a different state of society, the position which had once been that of a subordinate, or "junior," gradually became invested with the

No such tenure as either Gavel-kind or Borough-English appears to be traceable to the northward of the Humber, where in the reign of Elizabeth, when Lambarde wrote, *Tenant-right* was generally found, whilst *Copyhold* prevailed throughout the west of England, each marking the development of a somewhat different state of society. The original Copyholder was the representative of the Villein "inborn," and therefore irremovable from the land, whose name with those of his ancestors had appeared so long upon the "Copy of the Court Roll" of the manor to which they were attached—for "suitors" were necessary to the very existence of a Manorial Court—that a species of property had arisen out of the connection, and the land to which he had been bound still remained in his possession after "manumission," more or less subject to its former burdens. The holder by Tenant-right, on the other hand, often known as the "Customary Freeholder," was originally a Freeman who "could go where he willed," planted on the land to hold it at his lord's will, whose posterity acquired an "inborn" right, not to the property, but to the tenancy of the land, resembling the feudal principle of ἐμφύλευσις, or a hereditary tenancy inalienable as long as the due service was rendered, applied to Roturier tenure.*

This difference in the original condition of the population connected with the land is completely borne out by the Domesday Survey; for it will be found that at the date of the Norman conquest, contrary to the usually received idea, a greater amount of freedom was enjoyed in the Danelage than in England proper, or, in other words, Wessex and English Mercia. Throughout the

prerogatives of precedency. The prevalence of such a custom amongst a numerous class evidently implies the pre-existence of a state of society in which the eldest born, as they attained manhood, became "members of the state," and were provided for accordingly—in other words, the pre-existence of "a community."

* *Lambarde*, p. 14. These two classes seem to be alluded to in the Conqueror's laws, 29, 30, under the heads of the *coloni* who were not to be *vexed* beyond their *droite cense*, or removed from their land "pur tant cum il pussent le dreit servise faire;" and the *neifs*, who were not to leave their lands at all. A description of this "tenant right" will be found in *Kerr's Blackstone*, vol. 2, p. 97, note A.

latter districts, except in the case of the Gavellers of East Kent, military tenure seems to have prevailed with hardly any exception, no class existing between the Thegn, or holder by "knight service," whether King's Thegn, Medial, or Less Thegn, and the population attached to the soil, represented by the *Geneat* or Villein, the "inborn" tenant "at feorm" originally free but irremovable from the land, and bound to unlimited service to his lord—the *Cotsetla* or *Bordarius*, the free labourer occupying a cottage and plot of ground in place of wages, but paying neither rent nor taxes—and the serf numbered as a chattel amongst the stock.* From the well-known principle of the Anglo-

* *Rect. Sing. Pers.* The *Gebur* is also mentioned, the tenant of a *Virgate*, or quarter-holding, whose descendants would gradually become "inborn," and be classed as such amongst the Villeinage; and hence, perhaps, only 872 *Geburs* and *Coliberti* are mentioned in Domesday. They were probably the *Ferdingi—Fourthing*-men, quarter-holders—excluded with *Villani* and *Cotseti* from the office of "regis judices," in other words, from serving on the jury and pronouncing "the verdict of the neighbourhood," a privilege only belonging to the *Meliores pagenses* (*Leg. Hen. I.*, xxix.) The *Cotsetlas*, as a class, and their equivalents the *Bordarii*, probably represented enfranchised serfs; and if any inference may be drawn from *Leg. Hen. I.*, lxxxi. 3, where the villein's *overseunness* is reckoned at thirty pence, and the cotsetla's at fifteen, they were *originally* enfranchised *Wealh*. The type of the Bordarius, or free labourer, still exists in Norway. Not a trace of Socage tenure is to be found in the *Rectitudines*. By old Frank law the proprietor of less than half a *Mansus*, or of less than *five sol.*, was not bound to military service; and on the same principle none who were *beneficed* below half a Mansus, or *five sol.* in value, could give testimony *jure Beneficiali*. (*Capit. Carl. Mag. Pertz. Leg.*, vol. 1, p. 149. *Lib. de Ben.* 37). A similar principle was probably current amongst the Anglo-Saxons, for nothing under "a half-holding" is ever mentioned in their *Wergilds*, and wherever the custom prevailed, as in Berkshire (*Domesday*, vol. 1, p. 56, B), for every Five Hydes to furnish a *miles*, or knight, each Hyde contributing *four sol.*, it is probable that no one was called upon who held less than half a Hyde by knight-service; for it will be found that even in "base tenure," the Gebur, or tenant of a quarter-holding, was not, like the Geneat, liable to "*heafod-ward* and *hors-ward*"—to guard the castle and ride with his lord when required. The principle of the half-holding is in a certain sense still in force, though not as a qualification for military service, but for—*a vote;* for when Henry IV., in pursuance, apparently, of his grandfather's policy, gave the privilege of choosing "the knights of the shire" to the freeholders of the county, the owner of "a forty shilling freehold" held the tenth part of a knight's fee, which was valued at £20, and supposed to contain five Hydes, and thus evidently represented the "homo beneficiarius" with a half-holding (7 *Hen. IV.*, c. 15). His equivalent amongst the Normans of the Duchy was the

Saxon law requiring three descents of "thegn right" to render the race Gesithcund, it is probable that the custom

holder of the *eighth* part of a *Fief de Hauberc*, for the Norman fief was divided by *eight*, perhaps because the Northmen reckoned by the *Mark*. From "the Customs of Normandy" it may be gathered that in the sixteenth century the relief paid for the duchy was 333⅓ *ecus;* for a marquisate 166⅔; for a county 83⅓; and for a barony 33⅓; *thirds*, apparently, of 1000, 500, 250, and 100 *ecus* respectively. By the old law the relief paid for the land held in *fee-farm*, or by *cens*, was a year's rent; and if it may be conjectured that when the relief from other lands was assessed in money it was levied on a similar principle, it will follow that by "old custom" rent was fixed at a *third* of the produce or annual value of the land, a rate which would form a very fair average even at the present time. This is probably the meaning of the expression in Magna Charta, "the old Rent"—not a fixed sum, but a fixed principle, *the thirds*. The Scottish *Davoch*—literally "the pasturage"—containing 416 Scottish acres, was divided into four *plough-lands*, each sub-divided into eight *ox-gangs* of thirteen acres. Two ox-gangs, or twenty-six acres, made a *Husbandland*, which was thus the fourth part of a Plough-land, or "a quarter-holding." In the barony of Bolden, the Abbey of Kelso had twenty-eight *Husbandlands*, each paying a rent of 6s. 8d., and if the theory of *thirds* is correct, each of the yearly value of £1, and the Scottish *Husbandland* was thus identical with the Anglo-Saxon Virgate, or quarter-holding, the Husbandman with the Gebur. Each Husbandland was bound to furnish *two* oxen to the common plough, so that the *ox-gang* probably gained its name from providing *an ox* towards the same purpose; whilst in early times all the stock was supplied alike to Gebur and Husbandman, and known in Scotland as *Stuht* and *Steelbo*. The class next above the Husbandman would be the holders of half a plough-land, the eighth of a Davoch, or, if the Davoch was held by knight-service, the eighth of a *Fief de Hauberc*—for the Norman method of reckoning was evidently in force in Scotland—and the *Heritors* of this amount of land were equivalent to the "forty shilling free-holders," both possessing "half-holdings." The holder of an entire plough-land, "a holding," probably kept a plough of his own, and seems to have been bound to serve as a man-at-arms. The Scottish acre at the present time is equal to 5 statute roods 64 yards, almost exactly equivalent to the old French *arpent;* a fact which is not a little remarkable if it is the old measure, for, as it is neither Saxon nor Norman, it must necessarily have been an old *Gallic* measure. In his "*Saxons, etc.*, vol. 1, *Ap. Hyde*," Mr. Kemble has clearly shown that the Hyde cannot be taken as an invariable measure of 120 acres, proving also that there was a Hyde of 40 in Devonshire; but as there were at least *twenty-five* variations in the measurement of the acre in different English counties and *eight* in Wales, it is very doubtful if the Hyde can be regarded as a measure in the modern sense of the word. It is safest to render it "Holding," and as land was gradually reckoned by its money value rather than by its extent, as the acre increased in value the Holding probably diminished in size. There is the same uncertainty about the *Mansus*, often regarded as the equivalent of the Hyde. According to certain Italian authorities it was the amount of land which two oxen could plough in a year—far more probably the amount bound to furnish two oxen to the com-

of this portion of the kingdom resembled the old Imperial law relating to the benefice, limiting the *jus beneficiale* to the man of three descents—to him whose father and grandfather had held a benefice by military service. In Danelage, on the contrary, omitting Yorkshire from the calculation, between a third and a fourth of the entire population were classified either as *Liberi Homines*, or as *Socmen*, generally enjoying as a class the liberty of going where they willed, and, in the case of the socmen, with a certain amount of proprietary right. In Mercia there were found 132 liberi homines, and in Kent 44 socmen, whilst in Wessex both classes appear to have been absolutely unknown, though the servile population in the latter quarter exceeded by nearly 3000 that of Mercia and the whole of Danelage united. The absolute serfs in the three western counties of Devonshire, Somersetshire, and Cornwall, alone more than equalled, and the same class in England proper considerably more than trebled in

mon plough; whilst in France it was often twelve French acres. This appears to have been the Mansus of Charlemagne's law, which was only valued at *ten sol.*—for the man with *five sol.* was the equal of the holder of half a Mansus. Three of these mansi, valued at *thirty sol.*, furnished a man to the army; the holder of twelve, valued at £6, was bound to wear a *byrnie* (bruneam). He was the man-at-arms, holding *four* times the amount of the simple spearman or archer. Three mansi were also a qualification amongst the Saxons, no one being allowed to pasture his cattle apart and thus diminish the profit of the common herdsman (the *Gafol-sweyn*), unless he held three mansi as Allod or Benefice—sub-titulo proprietatis aut feudalis (*Spec. Sax.*, l. 2, A. 54, sec. 2). As the *Fyrdwite* of 120 *scillings* or £2, the tenth of the *English* Gesithcundman's Wergild, re-appears in the £2 generally paid as *scutage*—permission to "neglect the *Fyrd*"—under the Plantagenets, so the *Bannus regius* of sixty *solidi*, the tenth of the Antrustion's Leodgild, reappears in a similar manner in the old French *ecu*—the price of a shield—of three livres, or sixty *solidi*. The "worth" of the *English* Thegn, £20, was also his qualification in land; and if the same principle applied to the Antrustion, if his qualification was £30 of land, then three mansi, or *thirty sol.*, were equivalent to a "quarter holding;" twelve mansi, or £6, to the "holding," Hyde, or Ploughland; and five times that amount, sixty mansi, or £30, the qualification of the Antrustion, to five Hydes, or "a knight's fee." If this conjecture is correct, it marks the presence of "imperial" influences in England before the Conquest. (*Pertz. Leg.*, vol. 1, p. 133, 149. *Les Coutumes du Pays de Normandie*, 152-6. *Ducange* (*Heinschel*) in voc. *Mansus*. *Innes* "*Sketches, etc.*," p. 191-2 and note, and "*Scotland in the Middle Ages*," p. 139, 140).

number the whole amount of the servile population throughout the entire extent of Danelage. No serfs at all were entered for either Yorkshire or Lincolnshire, the two districts most peculiarly Anglo-Danish, and only 46 were to be found in the united shires of Nottingham and Derby, where Danish customs appear to have been also prevalent, the whole of the servile population being traceable in East Anglia, where the earlier customs were little altered, and upon the frontiers of English Mercia. In short, wherever the Northman is traceable, there the Socman and the Liber Homo are found and the serf disappears, and Free socage, the very tenure which is sometimes supposed to have been peculiarly a relic of Anglo-Saxon liberty, appears to have been absolutely unknown except amongst the Anglo-Danes. The omission of all notice of Anglo-Northumbria in the Conqueror's Survey, together with the absence to this day of the territorial division of the Hundred in that quarter, strongly confirms the remark of Ordericus Vitalis, that, in the time of the Confessor and his predecessors, their allegiance sat lightly upon the people of the northern frontiers: and as a state of freedom was often in that age synonymous with a state of lawlessness, it may perhaps be inferred from the very weakness of the royal authority that in the extreme north, as in Danelage, a greater amount of freedom existed amongst the population than in the more peaceful and orderly districts of the south and west.*

* The accompanying schedule is framed upon *Ellis' Introd. to Domesday*, vol. 2, except in the case of the six socmen in Gloucestershire, which appears to be a mistake (*Vide Lappenberg's Eng. under A. N. Kings* (*Thorpe*), p. 202, note 2). The original boundary settled between Alfred and his *Witan*, and Guthrum and his *Theod*—the difference is well worthy of remark—ran from the Thames along the Lea to its source, or in general terms, from Waltham to Dunstable, then straight to Bedford and along the Ouse to Watling Street, touching it near Stony Stratford (*Alf. and Guth.*, 1), including the greater part of Hertfordshire, Bedfordshire, Northamptonshire, and a small portion of Buckinghamshire. In later times Danelage reached to Watling Street and eight miles beyond (*Leg. Ed. Conf.*, 30), including more of the latter county, which, however, I have reckoned in Wessex to counterbalance the small portions of the three other counties which I have considered as parts of the Danelage. Its twenty socmen, however, I have placed in the Danelage, as, except in Kent, the class in

question was confined to Danish England, representing the *Land-agende men*, or proprietary, descendants of the *Odal-Bonders*, brought into the *socn* of (or commended to) a *Landrica*, or overlord.

	Ten. in cap.	Mesne lords.	Socmen.	Liberi Hom.	Villani.	Bordarii.	Servi.
Wessex . .	948	3037	44 (Kent)	0	45,860	36,876	14,829
English Mercia	321	1335	0	132	18,692	11,458	5,496
Southumbrian } Danelage }	764	3423	22,700	12,233	38,645	39,360	6,497

I have omitted Yorkshire from this calculation, both because Domesday throws no light upon the state of the rest of Northumbria, and because the Survey, taken *after* the disastrous Northern wars, affords no clue to the previous condition of the province beyond the Humber. In Lincolnshire 7723 Villeins, 4024 Bordarii, and 11,504 Socmen are recorded; in Yorkshire 5079 Villeins, 1835 Bordarii and Cotsetlas, and only 447 Socmen. It is impossible that this enumeration can represent the ordinary condition of the *Land-agende* class in the most powerful of the Anglo-Danish communities; but it shows at a glance *who* bore the brunt of the Northern wars. Many of the Yorkshire Odal-Bonders had fallen, still more were probably in exile, or were outlaws, predecessors of the bands who afterwards made famous the *Scar*, *Cairn*, and *Nieder* woods—Sherwood, Charnwood, and Needwood.

Appendix E.

WERGILDS.

FRANK WERGILDS.

[1] Bishop	900	*Solidi.*
[2] Graphio, Sagibaro, [3] Antrustio — Ingenuus	600	,,
[1] Deacon	400	,,
[2] Graphio, Sagibaro — Puer Regis vel Litus; [4] Romanus, Conviva Regis; [1] Subdeacon	300	,,
[4] Ingenuus (Leud); Barbarus, living by Salic Law; Libertus per denarium; [5] Frank Advena (R.)	200	,,
[5] Advena, if Burgundian, Alaman, Bavarian, Saxon, or Frison (R.)	160	,,
[4] Romanus, qui res habet in pago suo; Romanus, Advena (R.); Homo Regis (R.); Homo Ecclesiasticus (R.); Libertus per tabulam (R.)	100	,,
[6] Puer Regis; Libertus; Romanus Ingenuus; Tributarius; Miles	100	,,
[4] Romanus, tributarius	45	,,
[7] Servus (R.); Litus (R.); Tributarius (R.)	36	,,

Servus (S.)	35 *Solidi.*
Servus Ministralis	25 „

The *Wergild* was trebled if the man was slain "in hoste;" and again trebled (*novigeld*) if "in curte regis," in the king's court; or if he was one of the royal *Hird.*

[1] *L. S.*, tit. 58. *L. R.*, tit. 36. The Clergy are not even alluded to in the *Pactus Antiquior*, and in *L. R.* they were originally assessed according to their birth, as "Servi, Homines regii vel ecclesiastici, Liti, vel Liberi." The subsequent high valuation was owing to the connection of Charlemagne with Italy, and was added to the Salic law in 803 (*Pertz. Leg.*, vol. 1, p. 113). The older custom was at one time in force in Saxon England, for, according to the laws of Henry I. (lxviii. 3), which were supposed to represent old English law, the clergy were reckoned according to their birth.

[2] *L. S.*, tit. 56. *L. R.*, tit. 53.

[3] *L. S.*, tit. 43, 44. *Marc. Form.* (*Canc.*), l. 1, 18. The *Antrustion* was the *Leud* who swore fealty "in palatio nostro cum *arimannia suâ*"—with his *Hird* or "following"—the *Fidelis* who thus "commended" himself to the king.

[4] *L. S.*, tit. 43. *L. R.*, tit. 7-9, 57, 62. The Libertus *per denarium* was freed by Frank, *per tabulam* by Roman law. The former was "by ancient custom," the latter "by charter."

[5] *L. R.*, tit 36. The *advena* was the foreign settler, "the stranger and sojourner."

[6] *Edict. Chilp. Addit.* 1. (*Pertz. Leg.*, vol. 2, p. 12.) A very old regulation, between 561-584; upwards of two centuries earlier than the rest.

[7] *L. S.*, tit. 11, 53. *Recap.* 15, 22. *L. R.*, tit. 10, 62. Various classes of *Serviles Mansuarii*, or unfree *Læts.* The *Servus Ministralis* was the personal slave.

FRISONS.

	I.	II.	III.	IV.
[1] Nobilis	80 *sol.*	100 *sol.*	106 *sol.* 2 *den.*	11 *lb.* old money.
Liber	53 *sol.* 1 *den.*	50 „	53 „ 1 „	5 *lb.* 6 *oz.* „
Litus	26 „ 2 „ / 8 „ 2 „	25 „	26 „ 2 „	2 *lb.* 9 *oz.* „
Servus	. . .	his value	. .	1 *lb.* 4½ *oz.* „

[1] *L. F.*, tit. 1, 15. 1. The *Wergilds* of Friesland proper, between Fli and Laubach, apparently the original valuations, as all other compensations are reckoned *in thirds.* 2. Between Fli and Sincfal, or West Friesland. The *Fli-landers* became *Fl'andrenses* or Flemings. 3. Between Laubach and Weser, or East Friesland. Women were valued at the same rate as men. Two-thirds of the *wergild* went to the heir—or in the case of the *Læt*, to his lord—one third, to the "propinqui," or *Mæg.* Neither king nor community had any claim in this point on the free Frison.

ALAMANNI.

[1] Duke	The same?
Bishop	
[1] Priest	600 *Solidi.*
[1] Deacon	400 „
[2] Primus Alamannus (Fürst)	240 „
Medius Alamannus	200 „
Liber, without heirs	
[2] Baro de Minofledis (Ingenuus)	160 „
Liber Colonus Regis vel Ecclesiæ (Sætta)	
[3] Libertus per chartam regis vel ad Ecclesiam	80 „
[4] Servus Regis vel Ecclesiæ	65 „ / 62 „ / 45 „
[5] Pastor, Seneschallus, etc.	40 „
[4] (Servus Ministralis)	(20) „ / (15) „

[1] *L. A.*, tit. 12, 13, 14.

[2] *Do.*, tit. 9, 23, 46, 68. *Pact.*, ii. sec. 37-41 (*Pertz.*) The *Primus* was the head of a *Cyn*, or *Fürst*. By Alaman and Bavarian law the *Femina* was reckoned at double the *Baro;* and as the *Femina Minofleda* is valued at 320 *Solidi*, it is evident that the *Baro de Minofledis* was rated at 160. Where 170 occurs it must be an error. It is surely a mistake to identify the *Baro de Minofledis* with the *Læt*—the Landowner with the occupying tenant.

[3] *L. A.*, tit. 17.

[4] *Do.*, tit. 8. The *Servus Regis vel Ecclesiæ* was reckoned at three times the value of the ordinary servus, and his *Wergild* varies in *Pertz.*, *Canc.* and *Lind.* All within brackets is conjectural.

[5] *Do.*, tit. 79.

BAVARIANS.

[1] Duke	960 *Solidi.*
[1] Agilolfing	640 „
[2] Priest "in gold"	300 „
[2] Deacon do.	200 „
[1] "The five races"	320 „
[3] Ingenuus	160 „
[4] Libertus per chartam Regis vel Ecclesiæ	80 „
[5] Liber Manumissus (Frilaiz)	40 „
[6] Servus (Laiz)	20 „

[1] *L. B.*, tit. 2, c. 20.

[2] *Do.*, tit. 1, c. 10.

[3] *Do.*, tit. 3, c. 13.

[4] *De Pop. Leg.*, sec. 7-9.

[5] *L. B.*, tit. 4, sec. 11.

[6] *Do.*, tit. 5, sec. 18.

ANGLES AND WERNS.

[1] Adelingus	600	*Solidi.*
[1] Liber	200	,,
[2] Libertus	80	,,
[1] Servus	30	,,

[1] *A. et W.*, tit. 1, 2, 4.

[2] *Do.*, tit. 9, adding, "in all compositions the Libertus to be rated at *half the value* of the Liber."

LOMBARDS.

[1] Primus Gasindius Maximus	300	*Solidi.*
[1] Gasindius Minimus	200	,,
[1] Minima persona quæ exercitialis homo invenitur	150	,,
[2] Aldius	60	,,
Servus	50	,,
	25	,,
	20	,,
	16	,,

[1] *L. L.*, l. 1, tit. 9, sec. 29 (*Lind*). The *Gasind* amongst the Continental Germans was the equivalent of the Anglo-Saxon *Gesith*. The Lombard *Gastaldus* was the deputy or *Staller*.

[2] *Do.*, l. 1, tit. 11 (*Lind*). The *Aldius* was the *Læt*, the old Italian *colonus* attached to the soil.

SAXONS.

[1] Nobilis	1440	*Solidi.*
Litus	120	,,
Servus	36	,,

[2] Item placuit omnibus Saxonibus, ut ubicumque Franci secundum legem, *Sol.* 15, solvere debent, ibi Nobiliores Saxones 12, Ingenui 5, Liti 4, componant.

[1] *L. S.*, tit. 2, sec. 1-4. In all compositions the *Litus* was rated at *one-twelfth* the value of the noble, who was consequently a *Twelf-hyndman*. The Saxons appear to have reckoned in "long hundreds."

[2] *Capit Sax. ad an.* 797, sec. 3 (*Pertz. Leg.*, vol. 1, p. 75). It is given differently in *Canc.* It would have placed the Saxons on the footing of the Alamans and Bavarians, as 15 : 12 : : 200 : 160.

BURGUNDIANS.

[1] Nobilis Burgundio Do. Romanus	300 *Solidi.*
[1] Mediocris Burgundio Do. Romanus	200 „
[1] Minor (Leudis) Burgundio Do. Romanus Servus Regis, Barbarus [2] Actor Regis [3] Servus, Goldsmith	150 „
[2] Actor Privatus [3] Servus, Silversmith	100 „
Do. Barbarus	55 „
Do. Smith	50 „
Do. Carpenter	40 „
Servus	30 „

[1] *Leg. Burgund.*, tit. 2, sec. 2. These are the oldest of all the Wergilds, dating from the fifth century.

[2] *Do.*, t it. 50. The compensation for the *Witte scalc*, the puer regis who levied the *wite*, was, as usual, threefold, tit. 70.

[3] *Do.*, tit. 10. Though the Libertus is frequently mentioned, his wergild never is met with. The high valuation of the skilled artificer is remarkable, and some light is thrown upon the condition of "townsmen" before the rise of "free towns."

There are no means, as far as I am aware, of ascertaining with any accuracy the Wergilds of the Goths. According to Procopius, the Ostrogoths introduced no changes, and had neither a written nor an unwritten code; though it is more likely that they introduced none than that they had none. The "potens Romanus aut Barbarus" amongst this people, with the permission to marry with *Romans* of equal rank, latterly accorded to the Visigoths, points to an equality amongst the two races, as amongst the Burgundians; whilst the "nobilis, mediocris, et minor persona" amongst the Visigoths, marks the threefold division, so generally traceable in most of the Germanic Wergilds, to have also been in force amongst the Goths. The composition for a noble amongst the Visigoths seems to have been either 300 or 500 *solidi*, probably the latter sum, for 500 *sueldos* was subsequently the valuation of the royal *Merino*, and of the *Fijo d'Algo* (Hidalgo), and the sum paid for "scandalizing" them. Six times this amount, or 3000 *sueldos*, was paid for "scandalizing" the residence of the

king, a proportion exactly answering to that existing by Mercian (or old English) law between the King and his Thegns. *Procop. de B. G.*, l. 1, c. 5; l. 2, c. 6. *Cod. Theod.*, sec. 48. *Lex. Vis.*, l. 3, tit. 1, sec. 1; l. 7, tit. 2, sec. 8. *Fueros Viejos*, l. 1, tit. 2, c. 3; tit. 5, c. 12.

KENT. ETHELBERT, 597-616.

[1] Eorl	600	*Scillings.*
Ceorl	200	,,
[2] Læt, 1st class	80	,,
Do. 2d class	60	,,
Do. 3d class	40	,,

[1] *Ethel.* 7, 21. *Hlot. et Ead.*, 1-4. The *medume Leodgild* of the Kentish freeman, which was evidently the *medietas compositionis*, or *medium weregildum*, of the Continental codes, was 100 scillings—a *manwyrth*. His full Leodgild, therefore, was 200, and the Eorl was reckoned at three times as much.

[2] *Ethel.* 26. There were also three classes of serfs.

WESSEX UNDER INI, 688-725.

Twelfhyndman	1200	*Scillings.*
Sixhyndman [1] Wealh with five hydes	600	,,
Twyhyndman [2] King's Horswealh	200	,,
[2] Wealh with a hyde Do Gafolgelda	120	,,
His son	100	,,
Wealh with half a hyde	80	,,
Free Wealh without land	60	,,
Theow	60 50	,, ,,

[1] *L. I.*, 24. "A Wealh if he has five hydes, he is Sixhynd." Such is the wording of the law, and there is no evidence of any other Sixhyndman. As a king's *Geneat* might be Twelfhynd, it is evident that military tenure was not at this period exclusively "noble tenure." (*L. I.*, 19.)

[2] *Do.*, 23, 32. The valuation of the "Wealh with a Hyde" looks like the old reckoning of "a long hundred."

WESSEX UNDER ALFRED.

Twelfhyndman	1200 *Scillings.*
Sixhyndman	600 „
Twyhyndman	200 „
[1] English Freeman	4 marks in gold.
Danish Freeman	
Ceorl upon Gafol-land	200 *Scillings.*
Danish Leysing	

[1] *Alf. and Guth.*, 2. The *Leysing* was the Freedman. By northern law the touch of oar or sail conferred freedom, so that every *Thrall* who crossed the sea into England by so doing became a *Leysing*.

NORTH PEOPLE'S LAW.

		Wessex.	Mercian.
King	Wergild 15,000 *Thrymsas*[1]	= 9000 *Scill.*	= 11,250 *Scill.*
	Cynbot 15,000 „	= 9000 „	= 11,250 „
Archbishop, Ætheling, Eorl	15,000 „	= 9000 „	= 11,250 „
Bishop, Ealdorman	8,000 „	= 4800 „	= 6,000 „
Hold, King's High Gerefa	4,000 „	= 2400 „	= 3,000 „
Priest, Thegn	2,000 „	= 1200 „	= 1,500 „
[2] Ceorl	267 / 266 „	= 160 „	= 200 „
Wealh with a hyde			120 „
Do. with half			80 „
Free Wealh without land			70 „

[1] The *Thrymsa* (or third of an *ore*), the *Eorl*, and the *Hold*, mark the presence of the Scandinavians. The date of this piece is probably before Canute. The Ealdorman and Thegn belonged to Saxon Northumbria.

[2] The Ceorl who "thrived to five hydes"—who held a benefice of that amount, or Bocland, by military service—and the merchant who made three successful voyages across the sea, acquired "Thegn right," but were not "Gesithcund." Three generations of military service alone conferred nobility upon *the family*.

From a comparison of these laws it will be found that a king stood in the same relation to his Thegns, in respect to his "simple wergild," as the Thegn to the Ceorl. From *Leg. Eth.* and *Ethelred VII.*, the same rule was apparently observed in Kent.

[1] MERCIAN LAW.

		Sceattas.		*Lb.*		*Scill.*
King	Wergild	30,000	=	120	=	7200
	Cynbot	30,000	=	120	=	7200
Thegn				20	=	1200
[2] Ceorl				„		200

[1] By this time *Hlaford-socn* was prevalent over Saxon England, and the Thegn had replaced the Gesithcund class. [2] *Oaths*, 13.

CANUTE.

[1] Liberalis	1200	*Scillings.*
Mediocris, secundum legem Anglorum et Werinorum	200	„

[1] *Constit. de For.*, 33, 34. King's and Medial Thegns amongst the Saxons, King's Thegns amongst the Danes, known as *Eldermen*, answered to the *Liberalis*. The Mediocris was the Saxon *Less Thegn*, the Danish *Yoongman*. Three classes paid *lah-slit* in the Danelage—the *Liberalis*, five marks; the *Land-agende man*, Odal-Bonder, or Socman, three marks; and the *Cyrl*, twelve ores. *N. P. L.*, 48 to 54. *Ed. and Guth.* 2, note A.

WILLIAM THE CONQUEROR.

Norman	40 *marks*, 6 to the kindred.
Thegn in Wessex	1200 *scill.* or 25 *lb.*
Thegn in Mercia	1200 *scill.* or 20 *lb.*
Rusticus	100 *solidi* or 5 *lb.* ?

Leg. Wil. Conq., I., sec. 2, 8; III., sec. 3. Compare *Ed. Conf.*, c. 15. *Leg. Hen. I.*, xci.

LEGES HEN. I.

Norman	40 *marks*, 6 to the kindred.
English Thegn	1200 *scill.* or 25 *lb.*
Villein	200 *scill.* or 4 *lb.*
Homo Londiniarum	100 *solidi* or 5 *lb.*

Leg. Hen. I., lxx., lxxvi., xci. *Cart. Civ. Lond.* The "200 *sol.* qui faciunt 4 lb." is not the exact sum, but an approximation to it.

ICELANDIC BAUGATAL.

		I.	II.	III.	IV.
Free-man	Baug	3 *marks*	20 *ores*	2 *marks*	12 *ores*
	Baugthak	6 *ores* 48 *thweiti*	4 *or.* 32 *thw.*	3 *or.* 24 *thw.*	2 *or.* 16 *thw.*
Ley-sing	Baug	12 *ores*	10 *ores*	1 *mark*	6 *ores*
	Baugthak	2 *ores*	4 *ortugas*	1 *ore*	2 *ortugas*
Thræl	Baug	23 *thweiti*	20 *thw.*	15 *thw.*	12 *thw.*
	Baugthak	7 *thw.*	3 *thw.*	3 *thw.*	2 *thw.*

Gragas, sec. 8, tit. 114. The *Baug* was originally an armlet—such as Tarpeia coveted—and latterly meant a fine. The fourfold division of the *Baugatal* was connected with degrees of consanguinity. The *ortuga* was a weight of eight *pennings*, three going to the *ore*, of which eight made a *mark*. Of the meaning of *thweiti* I know nothing.

GUTALAG.

	Vereldi.	*Bauda Vereldi.*
Gutniscman . .	3 *marks*, gold	12 *marks*, silver.
Ogutniscman . .	10 *marks*, silver	5 *marks*, silver.
Thræl . . .	4½ *marks*, pennings	6 *ores*, pennings.

Dietrich's Altnordische Lesebuch, p. 83. If the *Bauda-vereldi* of the Gutnisc man was half the *Vereldi*, as in the case of the Ogutnisc man, the mark "in gold" was equal to eight marks silver—the usual ratio at this time.

GULATHING.

	Mænde Rett.
[1] Jarl	12 *marks.*
Bishop	
Lænsmand	6 „
Stallare	
Odelsmand	3 „
Bonder	12 *ores.*
Frigivenmand's son	1 *mark.*
Frigivenmand	6 *ores.*

[2] Mansbote shall be reckoned in gold; for an Odelsmand, 18 *marks*, legal ores.

[3] Sons of Jarls, Bishops, Lænsmen, Stallares, Priests, Skutil Svends (Domestici Regii) and Fogdes (Castellans or Baillies) take Odelsmand's Rett.

[1] *Paus and Arnesin, Samlung, etc.*, vol. 1. *Gulathing, Hen Drab.*, c. 50.

[2] *Do.*, c. 30. This fine was equivalent to 144 marks silver, identical, probably, with the 144 lbs. in the Danelage, or "eighteen hundreds." The reason for reckoning in gold was probably to obtain a settled standard, as the silver coinage was much debased. It must be recollected that the only *coin* was the penny.

[3] The royal nobility which replaced the ancient allodial Jarls and Holders.

SWEDISH UPLAND LAW.

Bot, 40 marks. Twebot, 80 marks. Half-gialld, 20 marks.
Hundreda gialld, 120 marks. Highest gialld, 144 marks.

Leg. Upl., tit. 1, c. 9; tit. 3, c. 17; tit. 4, c. 5, 6, 8, 11-13. The fine of forty marks occurs continually, and was generally divided into three parts. The "eighteen hundreds" is also observable.

DANISH JUTLAND LAW.

Rætæ Botar for Mansdrap, 3 X 18 marks penningas.
For Mansdrap, 40 marks to the king.
Walraaf (robbing the dead), 40 marks.

Den Jydske Lav., l. 3, c. 21, 22, 24.

WELCH GWERTH.

[1] Brenhin	His Galanas trebled his Sarhaad.	
The Queen, King's sons, King's nephews, Edling (heir), Penteulu (Maire du Palais)	A third of the king "without the gold."	
[2] Distyn (High Steward), Cynghellwr (royal judge), Maer (royal thane), Pencenedl (chief or primus)	Galanas. 189 cows.	Sarhaad. 9 cows 180 argant.
[3] Swydderyllys (Court official), Breyr, Mabuchellwr } nobles	126 „	6 „ 20 „
[4] Gwr ur Deulu } member of the household	84 „	4 „ 80 „
[5] Boneddig (Ingenuus), Tyog Brenhin, Alltud Brenhin } King's Villeins	63 „	3 „ 60 „
Tyog Breyr, Alltud Breyr	half	half
Alltud Tyog	half	half
Caeth (serfs)	360 argant / 240 „	12 argant.

	Galanas.	Sarhaad.
[6] Pencenedl . . .	567 cows	27 cows 540 argant.
One of his family in Gwent	189 „	9 „ 180 „
do. Dyved	126 „	6 „ 120 „

The unmarried woman was reckoned at half the valuation of her brother; the married at a third of her husband.

[1] *Anc. Laws and Instit. of Wales. Laws of Gwynedd*, bk. 3, c. 1. *Laws of Dyved*, bk. 2, c. 12, 17. *Laws of Gwent*, bk. 2, c. 5. Also *Wootton's Welsh Laws*, l. 2, c. 21; l. 3, c. 2. The *Gwerth* (value) or *Galanas* (blood fine) was the Wergild; the *Sarhaad* "the injury" requiring to be righted. The king's Sarhaad was 100 cows and a bull from every Cantred, with a rod and plate of gold. The *Edling* was not necessarily the king's son; the *Penteulu* was always of the royal race. The *cow* was reckoned at 60 *argant* or *denarii*, of which 240=1 *punt*.

[2] The Cynghellwr seems to have had precedence of the Maer (*L. Gwyn.*, bk. 2, c. 19, sec. 18). The Pencenedl was ineligible for either office. One copy reads *Pencyned* (chief huntsman) for *Pencynedl;* evidently an error, as the Pencyned was amongst the *Swydder y Llys*.

[3] The noble was known in Gwynned as *Mabuchellwr*, and in Dyved as *Breyr*. The Maer amongst the Swydder y Llys was the *Maer y bis wael*, a *Mabaillt*, or of base extraction, and must not be confounded with the higher officer of the same name, who was always a *Mabuchellwr*—of gentle birth.

[4] The *Deulu* was the royal household.

[5] The *Boneddig Canwynawl* was the *Cymro* of pure race, fourth in descent, without stain of serf, alien, or criminal, *i.e.*, *wite-theow*. The *Tyog* and the *Alltud*, were occupying tenants or Villeins, the former, apparently, "inborn," the latter "of alien race," the stranger and sojourner.

[6] This is the valuation in the codes of Gwent and Dyved, but I doubt its correctness, suspecting that a *thrice* has crept in by mistake. It would be contrary to all precedent that the highest official of the royal household should be so far below the Pencenedl, or that the noble should lose rank by accepting office under the king.

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[1] LEGES INTER SCOTTOS ET BRETTOS.

	Cro.	*Gelchach.*	*De occisis in pace.*
[2] King	1000 cows or 3000 ores.	100 cows or 300 ores.	180 cows or 540 ores.
King's son / Earl	150 „ 450 „	$66\frac{2}{3}$ „ 200 „	90 „ 270 „
Earl's son / Thane	100 „ 300 „	44 cows + 21 *den.* $\frac{2}{3}$ [of a *maille*	60 „ 180 „
Thane's son	$66\frac{2}{3}$ „ 200 „	29 cows + 11 *den.* $\frac{1}{3}$ [of an *obolus.*	40 „ 120 „
Thane's grandson / [3] Ogtiern	44 + $21\frac{2}{3}$ *den.* $133\frac{1}{3}$ „	?	$20\frac{2}{3}$ „ 63 „
Carle or Villein	16 „ 48 „	none.	none.

The *cro*, the *galnes*, and the *enach* of the married woman were reckoned at a third less than that of her husband. The unmarried woman was valued at the same rate as her brothers. The *cro* and *galnes* went to the kindred, the *gelchach* to the husband if he was free; but if he was a villein, to the "lord of the fee."

[4] MERCHETA MULIERUM.

	Mercheta.	Serjeant's Fee.
[5] Filia Comitis et Reginæ (?)	12 cows or 72 *solidi.*	2 *solidi.*
Filia Thani vel Ogtierni .	2 „ 12 „	12 *denarii.*
Filia Liberi hominis . .	1 „ 6 „	6 „
Serva aut Mercinaria . .	1 heifer 3 „	3 „

[1] *Act. Parl. Scot.*, vol. 1, p. 299. *Cro* meant cattle in the sense of *pecunia; gild*, or payment in cattle. *Galnes* is evidently the Welsh *galanas*, and *Gelchach* or *Kelchyn* probably the Welsh *Sarhaad*, derived, perhaps, from *cal*, *cail*, *damnum* or injury.

[2] "Ores in gold," say the Latin and Scottish versions, meaning here "at the value of gold;" *i.e.*, not in depreciated silver.

[3] The Ogtiern was "the lesser lord" or landholder under the Thane, who held directly of the king, earl, or ecclesiastical superior.

[4] *Act. Parl. Scot.*, vol. 1, p. 276. (*Reg. Majest.*, l. 4, sec. 54.) From the cow being valued in money of a later date, and at a higher rate—six instead of four shillings—and from the mention of three different classes—the *liber homo*, *servus*, and *mercinarius*—this piece is evidently of a much later date than the other.

[5] The reading here is probably corrupt, for it seems strange that a queen's daughter should pay *merchet* to her own father. It means, perhaps, that the fine from an earl's daughter went *to the queen*.

The principle of the *Wergild*, or compensation for homicide, was not confined to the people of Teutonic origin, for under the name of *Gwerth* and *Eric*—*Worth* or value and man-payment—it was familiar to both divisions of the Celtic race, whilst there are traces of a knowledge of its existence, though it appears to have been discountenanced, in the Mosaic Code.* As early as the

* The "Estimation" in *Levit.*, c. 27, must have been a sort of "man-worth," though confined to the redemption of a vow and not applicable to homicide. It would appear from *Numb.*, c. 35, v. 31, 32, as if the principle of satisfaction or compensation for homicide was known, but disallowed in the case of wilful murder, though permitted in the case of accidental homicide, after the death of the High Priest. The legalisation of "the blood-feud" in the Mosaic code displays the weakness of the central authority, and the oriental fierceness of revenge amongst the Jews. Even the accidental homicide was

days of Tacitus, the *Feud* seems to have been appeasable amongst the Germans by a fine paid to the "universa domus"—the immediate kindred of the deceased man—lesser crimes being punishable by a mulct, of which part went to the state, king, or community at large, part to the injured party or his relatives.* It was not incumbent, however, upon the relatives to accept a compensation for their kinsman's slaughter, for it is evident from many examples that "blood for blood" was too often rigidly exacted; and it was only through the exertions of Archbishop Theodore, scandalized probably at the barbarous ferocity of his flock, that Egfred, the Christian king of the Christian Angles of Northumbria, accepted a *wergild* for his brother, slain in open battle with the Mercians, instead of appeasing the death-feud by human blood.† The early principle, which recognised the immediate kindred as the only parties interested in "the blood-feud," still continued in force amongst the Frisons when their written code was first compiled; whilst the adaptation of the other principle to the case of homicide, which is distinctly traceable

obliged to fly to sanctuary—to a city chosen probably for its strength—there to remain during the lifetime of the High Priest; and if he ventured without the walls "the avenger" might at any moment legally exact "blood for blood."

* "Luitur enim etiam homicidium . . . . recipitque satisfactionem *universa domus.*" *Tac. Germ.*, c. 21. "Levioribus delictis pro modo pœna . . . . pars multæ regi vel civitati, pars ipsi qui vindicatur, vel propinquis ejus, exsolvitur." Do., c. 12.

† "Pacatis alterutrum regibus et populis, *nullius anima hominis* pro interfecto regis fratre, sed debita solummodo multa pecuniæ, regi *ultori* daretur." *Bed. Hist. Eccl.*, l. 4, c. 21. Compare also the next chapter for the supposed necessity of avenging the death of relatives killed in battle. By the old Kentish law, the slayer of a freeman was *given up* to the kindred of the dead man, or if he escaped, a whole *Leodgild*, instead of a half, was paid. *Leg. Ethel.*, 21, 23. By Saxon law if a *Læt* killed a man at his lord's bidding, the latter paid the *Wergild*, or bore the feud; but if he cleared himself of the charge "by an oath of twelve," the *Læt and seven of his kindred* were given up to the avenging relatives. *Lex. Sax.*, tit. 2. As the *Wer-borh* seems to have invariably consisted of *eight* of the paternal and four of the maternal kindred, it would appear as if the whole *legal* paternal *mæg* were doomed to suffer in this case. By Mercian law, also, "If a man should avenge a Twelfhyndman he will be fully avenged *on six Ceorls.*" *Oaths*, 13. "Blood for blood," was the rule with Jew and Gentile in the olden time.

amongst the Anglo-Saxons in the compensation for the death of a king in the laws of the Mercians and "Northern people"—one half payable to the actual kindred of the king, the other (the *Cynebot*) belonging to the *Folk*, people or community—marks the increase of the power of the community or king, when it was regarded as the duty of the state, as well as of the immediate kindred, to exact retribution for the death of one of its members. In all other cases, however, amongst the same people the Wergild had become a far more complicated penalty in the days of Edward the Elder, in whose regulations for the composition of homicide four separate payments are enumerated; two of which, the *Fight-wite*, or penalty for a breach of the peace, and the *Wergild*, went to the king in his public capacity of head of the state and representative of the community; whilst of the other two, the *Halsfang* belonged to the immediate kindred on the father's side, and the *Manbote*, or compensation for the loss of a *man* or vassal, to the overlord, also meaning the king at that period in all cases where the parties held *bocland*.* *Halsfang* means literally "the grip on the throat," and seems to have been the sum paid to loosen, as it were, the hand of "the avenger of blood" from the throat of the homicide. It was identical with the *Mæg-bot* of Canute's laws,† and was apparently the older fine paid to the kindred to appease the feud, amounting to 120 *scillings* or "a long hundred." In the laws of the Kentish Ethelbert the *bot* for killing a freeman was 100 *scillings*, or a half *Leodgild*, and if the slayer escaped—if his *hals* was not placed in the avenger's hand—his kindred paid another similar sum, thus completing the full *Leodgild*. In the laws of Hlothaire and Eadric, if an *esne* (or household serf) killed an Eorlcundman, his lord was bound to pay 300 *scillings*—three *man-wyrths*—and give up the esne, or if the latter fled, to pay an additional *man-wyrth*. If the murdered man was a Ceorlcundman, 100 *scillings* and "*a second man-wyrth*" were to be paid—thus showing that the *man-wyrth* amounted to 100 *scillings*—and if

* *Ed. and Guth.* 13. † *Cnut. Ecc.* 2.

the esne escaped, another *man-wyrth*, as in the case of the Eorlcundman.* This identification in the Kentish laws of the *man-wyrth*—the worth or value of a man—with the sum of 100 *scillings*, or the half *Leodgild* of a Freeman, a fine of frequent occurrence in other Germanic codes, is well worthy of notice; suggesting the idea that the original principle of the Wergild was the payment of the dead man's *value* to the kindred to appease the feud, to which a second payment of his value was subsequently added, as an atonement for the crime against the state, wherever a king or a community existed. The want of a recognised *Mæg* to avenge his slaughter, or demand the usual compensation, would naturally cause the *Libertus* to be valued at only one *man-wyrth*, or half the valuation of a Full-Freeman, payable to the State or its head, the king, and latterly to the individual patron; and such accordingly was his usual valuation, until the decline of the old Germanic principle of the *Mæg* requiring "three

* *Leg. Ethel.*, 21, 23. *Hlot. et Ead.*, 1-4. A similar law was in force amongst the Franks. *Lex. Sal. Pact. Antiq.*, tit. 38. *Reform.* 37. By Eric's Zealand law, also (quoted in *Anc. Laws, etc.*, vol. 1, p. 28, note A), if a *Thrall* killed a *Freelsman*, his owner gave him up and paid *six* marks, or if the homicide escaped, *nine* marks; from which it would appear as if *three* marks (the old English *Halsfang* of two pounds, or 120 *scillings*) were at that time a *man-wyrth* in Zealand, two *man-wyrths*, as in Kent, or *six* marks (four pounds), being the *wergild* of a *Freelsman*. The serf it is evident was always given up—unless he ran away—and probably hung; just as at the close of a coroner's inquest at the present day, sometimes "the *animal* is ordered to be destroyed." It would appear from the "Story of Burnt Njal" that in the middle of the tenth century "two hundreds," *i.e.*, 200 ores, were "the price of two men" in Iceland; so that "a hundred" also represented a *man-wyrth* in that quarter at that period. "Two hundreds" were the valuation of an Odal-Bonder or proprietor, whilst greater men, such as Njal or Hauskiold, were reckoned at *three times* this valuation—as amongst the Franks and Kentishmen—and Liotr was paid for "by all the freemen in the Althing," at "eight hundreds." Twelve ores seems to have been the price of a *Thrall*, the usual valuation, apparently, of *a pound*, which is found in the agreement between Olaf Tryggveson and Ethelred, and is equivalent to the old English 60 *scillings*, the value of the Anglo-Saxon *Theow* and the free *Wealh* "without land." As these twelve ores probably represented "a long ten," and the hundred "a long hundred," the Freeman would appear to have been reckoned at ten times the value of the Thrall. *Vide* "Story of Burnt Njal" (vol. 2, App. p. 397), a work full of interest and information.

generations" for its development, and the substitution of the principle of "voisinage," vicinity or neighbourhood, placed the Freedman at once upon the same footing in this respect as the *Full-Free.*

Amongst the most prominent peculiarities of the Frankish system may be noticed the total absence of an *Allodial* nobility—using the word in its strict and primary meaning—and the elevation of the Libertus to an equality with the free proprietor. The Frank Leud, indeed, was a noble in reference to all other populations, but his representative dwindled in a later age into the proprietor in Frank-Alleu-*Roturier*, for the maxim expressed in the Visigothic code, "Ingenita libertas *gratiæ dono* fit nobilis," was evidently in full force amongst the Franks.* It is vain to look for the gradation of ranks observable in the valuations of nearly every other Germanic people of a corresponding period, the germ of which may be discovered in the division into *Nobilis* and *Ingenuus* in the days of Tacitus, and in the partition of the land, "secundum dignationem." Every Frankish Leud was on an equality with his fellows—there was neither Eorl nor Ceorl—and it was the *Graphio*, or official noble, and the *Antrustio*, the Fidelis or *Gesithcundman*, who stood in the place of the Saxon or Burgundian *Nobilis*, the Lombard or Alaman *Primus*, and the *Agilolfing*, or the member of "the Five Races" amongst the Bavarians. From the earliest period at which their laws were collected, the *Judex Fiscalis*, the *Missus* and *Domesticus Regis*, and the *Antrustion*, formed the noble class amongst the Franks, bound together by the ties of "service" and "dependance on an overlord"—the king; and the reception of the Antrustion—the Leud who swore personal fealty to the king with his *Arimannia* or *Hirdmen*, and was at once placed upon a footing with the Graphio, and assessed at three times his former valuation—holds a prominent place amongst the *Formularies* collected by Marculf in the seventh century, much of the

* *Lex. Vis.*, l. 5, tit. 7, sec. 17. The difference between the *Leud*, the free member of the *Leute* or people, and the *Antrustion*, or *Comes*, in the old sense of *Gesith*, has hardly been sufficiently kept in sight.

preponderance of the Western Franks being traceable to this early system of union under one head. The predominance of a class ennobled by service above the body of the free proprietors, a peculiarity as untraceable as the Salic law of succession, or as the equalization of the Libertus with the Ingenuus, amongst the more purely Allodial confederacies—with whom nobility was only acquired after the lapse of a certain number of generations—is scarcely to be regarded as an original principle in the Frankish system of government: it is rather to be attributed to the policy of Clovis after he had ruthlessly founded the dominion of his own branch of the Merovings in the blood of every other competitor. It is Roman rather than Teutonic—the roots of the Feudal system will hardly be discovered in the forests of Germany—the names of the ministers of the early Frank kings, Parthenius, Leo, and others recorded in the history of Gregory of Tours, showing how soon the subtle wit and educated intelligence of the Provincial were called in to assist and direct the rude force of his Germanic conqueror.

During the reigns of Clovis and his immediate successors, important additions were made to the dominions of the Franks within the boundaries of Gaul by the incorporation of Armorica, and other provinces, on a different footing from the earlier conquered districts to the north of the Loire, which had been portioned out amongst the Leudes in pure *Allod*, or retained as Fiscal land and administered by royal officials. In Armorica, or Neustria, however, and probably to the south of the Loire, no such Allodial division appears to have been carried out, and the provincial proprietary, though not on the same favoured footing of equality as amongst the Goths and Burgundians, seem to have been acknowledged as a class of taxed land owners rated at half the value of the ruling Franks, the *Conviva Regis* and the Graphio and *Sagibaro* of dependant or Lætic origin, forming a nobility standing in a similar relation to the Antrustion and Graphio of pure Frank blood. The lowest of the free

population seems to have been the Roman *tributarius*, representing apparently the great body of the *free* provincial population, particularly to the south of the Loire; for that this was a very wide class is evident from a passage in the *Capit. Leg. Gal.*, in which the *compensatio* of a simple Laic is reckoned at 45 *solidi*.* The highest of the servile class was the unfree *Læt* or "servilis mansuarius" attached to the land, the personal serf being the lowest.

Beyond the frontiers of Gaul the wars and conquests of Clovis and his successors had equally tended to the aggrandizement of the kingdom of the Franks, and in their relations with all other Teutonic confederacies the practice of that people appears to have been as follows:—The *Barbarus—Theotisc wer*, or *Deutsch'er*—"living by Salic Law" was placed upon an equality with the Frank; in other words, he was a naturalized Frank, an ally; but all other *Barbari* were reduced to the footing of clients or dependants, and rated at 160 *sol.*; the same valuation as the Teutonic *advena*, or foreign free settler amongst the Franks. The Lætic and Servile classes were equally influenced by the position of their patrons and masters, but the Libertus, following the older custom, was assessed at 80 *sol.*, or half the valuation of the free Leud. Eastward of the Rhine the Odaller, or Adaling, had not yet been replaced by the Antrustion. As the valuation of the Alaman and Bavarian was in a certain sense upon a footing of dependance, so in the Wergilds of the Angles and Werns will be found an example of the "Barbarus living by Salic Law"—the naturalized Frank, or ally. They were evidently the "Saxons" of the Thuringian

* *Pertz. Leg.*, vol. 1, p. 568. "Compositio Laicorum, Laicus laico emendat 45 *sol.*" The *Miles*, valued at 100 *sol.* in the old enactment of Chilperic (*Pertz. Leg.*, vol. 2, p. 12), was a different character from the *knight* of a later age. He was the *Hirdman*, or personal retainer, of the Antrustion or Leud; the *Ambactus*, for Ulphilas translates *Centurio* by *Wald-anbachts*. Only "the full-born" were entitled at this period to Allodial right, but there must have been a large class of "free-born" men who probably filled the ranks of the *Milites*, and of the higher classes of *Liti et Tributarii*.

conquest, the auxiliaries whom Theodoric planted in the land which was incorporated with the rest of the Frank kingdom as "Salic" territory—as *Sele-land*, or land granted out by the king. It is impossible that they could have been the original population of the country, for why should the detested Thuringians have been raised, after the conquest, above the level of the Alaman, the Bavarian, and the Burgundian, and placed upon a footing with the Frankish Leuds and Antrustions? On the contrary, it would appear as if they were deprived of "Allodial right"—the *jus hereditatis*, as it is sometimes called—and reduced to the condition of læts, serfs, and tributaries. The valuation of the *Libertus* at 80 *sol.* is remarkable; as if the *client* was only on a footing with the Libertus of the dependant dukedoms, whilst his *patron* alone enjoyed the privilege of equality with the freeborn Frank. When Clovis originally conquered the Thuringians, they must have naturally been placed upon the footing of a Frank dependency. They subsequently threw off the yoke, signalizing their success by the atrocities alluded to in a speech which Gregory of Tours places in the mouth of Theodoric; and after their final conquest, and the permanent annexation of their territory to "Salic France," they may have been reduced, by the loss of "Allodial right," to the level of their original dependants, whilst their conquerors, the "English" auxiliaries, were placed upon an equality with the Franks.*

In the Saxon *Nobilis*, assessed at twelve times the value of the Læt, may be seen, in spite of the disguise of reckoning by the old method of "long hundreds," the type and original of the Anglo-Saxon "Twelfhyndman," whilst the absence of the *Liber* is not a little remarkable, every "full-born" Saxon appearing to have been, as amongst the Northmen, an *Atheling*. As the peculiar valuation of the continental Saxons must have been carried into Britain several generations before their unwritten code was compiled in a written form by direction

* *Greg. Tur. Hist. Ecc.*, l. 2, c. 27; 13. *Epist. Franc. Reg.* 20 (*Duchesne*, vol. 1).
l. 3, c. 7. *Procop. de B. G.*, l. 1, c.

of Charlemagne,* it is evident that many of the old "customs," contained in the Continental and English Codes, ascend to a period far more remote than that in which they were first collected into a written form, and intermingled with the principles of a later age.

North and west of the Saxons, on the left bank of the Weser, stretched the ancient confederacies of the Frisons, presenting in their institutions the widest contrast to the Franks. The leading nobles of the great German confederacies, in the time of Tacitus, prided themselves upon the numbers and valour of their *Comites*, freemen who relinquished their "allodial right" to dedicate themselves to the service of a Patron, and who were represented at a later period by the Antrustions, Gasinds, or Gesithcundmen. It was in the very nature of such a class, originally precluded from holding land except as a *Læn* or *Benefice*—a reward for military service—to be essentially warlike and aggressive; the close tie of union which bound them to their lord rendering them a most formidable band of soldiery, pledged to carry out the will of one man alone, whose interests were identical with their own. But there was another phase of society in which the freeman clung to his independence and original equality, regarding the tie that bound the *Comes* to his lord as the badge of a degrading servitude, dangerous to liberty. The Antrustion or Gesithcundman were unknown, and the Noble appears to have stood out from amongst the ranks of the Freemen, his equals in nearly every respect, only from his descent, or his position as the head of a kindred. "Blood" was the sole bond of union, every kindred being "autonomous," and the whole people a free but disunited confederacy. Such were the Frisons, tenacious of their equal "allodial right," and weak from the disunion resulting as a necessary consequence of their rude independence; as a people, from this very cause, never aggressive, always encroached

* Pauca capitula, et ea imperfecta, legibus addidit . . . . omnium tamen nationum quæ sub ejus dominatu erant, jura quæ scripta non erant describere ac literis mandari fecit. *Egin. Vit. Carol.*, sec. 29. A similar course seems to have been followed by Alfred.

upon, and only able to maintain their cherished equality amidst the swamps and marshes of the Lower Rhine. It may have been from this cause that, though entering largely into the composition of the population of Saxon England, their name appears to have passed away from the recollection of their descendants, probably because their numerous petty communities were absorbed amongst, and amalgamated with, the more powerful and united Saxon and Anglian confederacies. The number and variety of their Wergilds strongly attest this principle of disunion, every river seeming to have formed a boundary between kindred, but unconnected, communities; whilst the Wergild itself, divided between the kindred and the heir, seems to ignore all right in the *State* to interfere with the *Individual;* and the slight difference in the valuation of the Noble, the Freeman, and the Læt, stands out in marked contrast to the complicated system of the Franks, and the high rating of the aristocratic Saxon Twelfhyndman.*

In the earliest of the Anglo-Saxon codes, that of the Kentish Ethelbert, the old division into *Eorl*, *Ceorl*, and *Læt*, is still observable—the *Libertus* indeed, as the type of a class, appears to have been confined to the Frank kingdom and its dependencies—whilst the similarity of the Kentish Wergilds with those of the Angles and Werns, and the apparent identity of their coinage with that of old "Salic France," are points which, though possibly accidental, are not a little remarkable. Procopius, indeed, in his account of the embassy sent by Theodobert to Justinian, mentions that Angles accompanied the Frank ambassadors as a proof of the dominion of the king of the

* Military tenure—"service"—was long unknown amongst the Frisons, who looked upon knighthood as a degradation, and jealously forbade the use of stone, or the construction of any house with walls above twelve feet high. They obeyed their annually elected *Asegas*—Lagamen or Judges—and the *Hovedlinge*, or nobility, were on a perfect footing of equality in the *Folkmote* with the *Meen Mente, Gemeinred* or lesser freemen. As late as the close of the fourteenth century the "blood feud" was still in the hands of the kindred rather than the state. *Vide Leg. Fris.* (*Canc.*), tit. 2, note 5, where the wergild seems to have been forty "old marks."

Franks over the island from whence these Angles came; asserting also, in his strange fable about *Brittia*, that a people inhabited its coasts, dependant upon, but not tributary to, the Franks.* If the accounts of the eastern historian could be relied upon, the cause of such resemblance would be at once explained; but it must not be forgotten that in his letter to Justinian, written probably on the occasion of this very embassy, Theodobert makes no pretensions to any authority over Britain, though he is by no means backward in exalting the extent of his dominions. The presence of Angles at Constantinople may be regarded as an undoubted fact, but they were probably Angles from the recently conquered Thuringia, or members of the great confederacy of "the Northern Suevi;" and in the utter dearth of authentic records of that distant period of British history beyond the vague lamentations of Gildas it would be hazardous to found any conclusions upon the confused accounts of the Byzantine historian.†

* Φιλοτιμούμενος ὡς καὶ ἡ νῆσος ἥδε πρὸς αὐτοῦ ἄρχεται . . . . . τὰ μεν ἄλλα Φράγγων κατήκοοι ὄντες, φόρου μέντοι ἀπαγωγὴν οὐδεπότε παρασχόμενοι. *Procop. de B. G.*, l. 4, c. 20.

† The expressions of Theodobert are, "Id vero quod dignanimi esse solliciti, in quibus Provinciis habitemus, aut quæ gentes nostræ sint, Deo adjutore, ditioni subjectæ, Dei nostri misericordia feliciter subactis Thuringis, et eorum Provinciis acquisitis, extinctis ipsorum tum temporis Regibus, Norsavorum gentis nobis placata majestas colla subdidit; Deoque propitio, Wisigothis qui incolebant septentrionalem plagam, Pannoniano cum Saxonibus Euciis qui se nobis voluntate propria tradiderant, per Danubium et limitem Pannoniæ usque in Oceani littoribus, custodiente Deo, dominatio nostra porrigitur." *Ep. Fr. Reg.* 20. Zeuss identifies the *Norsavi* with certain Suevi planted by the Frank kings in the lands relinquished by the Saxons who accompanied the Lombards into Italy; but independently of the fact that "placata majestas" would scarcely be an expression suitable to a body of Frank "liberi coloni," mustering only 6000 fighting men, the Saxons who went to Italy with the Lombards in 568 must have still remained in their earlier location for *twenty years after the death* of Theodobert. There was no other people to answer to "the Northern Suevi" at this period except the Angles—"the Midland Angles" of Ptolemy. There was evidently a great movement beyond the Frank frontier about this time in consequence of the increasing power of the early Merovings, the Lombards disappearing from their earlier settlements, the cause of their migration being very evident; for in 552 the Frank leaders refused a passage to Narses, because he had their *greatest enemies, the Lombards*, in his train (*Procop. de B. G.*, l. 4, c. 26). This extension of the Frank

A different state of society again is disclosed in the laws of Ini, a provincial class existing by the side of the Twelf and Twy-hyndmen, on the footing apparently of the *Roman*—or *Wealh*—amongst the Franks; the "Wealh with a hyde of land" answering very much to the "Romanus qui res habet in pago suo," whilst the "Wealh with five hydes," as a Six-hyndman, seems to have corresponded with the Conviva Regis, and the Graphio, or official, of the second class.* It would appear as if in the earlier conquests of the Anglo-Saxons, as amongst the Franks, the Wealh population had been reduced to the condition of unfree Læts and Theows, or of predial and personal serfs; but that in later times, when the original *Mark* was crossed, all conquered lands belonged to the king, and the Wealh were allowed to remain as a tributary class rated at half the valuation of the dominant race. Allodial grants of the newly acquired territory were no longer made to the *Ge-Wissi*, the occupant of the land appearing as a *Gencat* or a *Gebur*—the *enjoyer*, or tenant, not the proprietor of the land—and the class thus planted beyond the earlier *Mark* appears to have been often known as *Sættas* rather than *Wara*, not unlike the "Liberi coloni Regis" upon the Continent, and is invariably to be traced beyond the original western frontier. Such were the Wilt-*scattas*, the Dorn-*sættas*, and the Sumer-*sættas* to the westward of the original *marches* of Wessex; whilst northward of the Thames, the Maga-*sættas*, Scrob-*sættas*, Pec-

power may have had something to do with the great influx of Angles into Britain about the middle of the century.

* The "Wealh with five hydes" is the only Sixhyndman ever mentioned in the Anglo-Saxon laws. There may have been a class equivalent to the Continental *Mediocris*, but no such character is traceable amongst the Continental Angles or Saxons. The "Conviva Regis," who is met with amongst the Franks and Burgundians, was probably the *Roman* equivalent of the Antrustion amongst the early Franks. The name survives in the Breton *Kenviva*, derived from *Biva*, which, in one sense is identical with *Biodh*, *Feorm*, *victus*. *Coim-biodh*, *coigny*, was in Ireland equivalent to "victualling," and the original Conviva may have been the man who held his land by a tenure similar to that of the Scandinavian *veitslo*—victualling the king during his progresses. The meaning of Conviva was probably as ambiguous as that of Hospes. From a passage in Gregory of Tours (*Hist. Ecc.*, l. 7, c. 16), it was apparently also an honorary rank.

sættas, and Elmet-*sættas*, in Herefordshire, Shropshire, North Derbyshire, and the West Riding of Yorkshire, point to the encroachments of the Angles beyond the older marches of Mercia and Northumbria, the former kingdom, from its name, having once been the Anglian *March*, or frontier to the westward. The Sixhyndman disappears after the reign of Alfred, Wealh and Saxon gradually ceasing to be distinguishable amongst the upper classes amidst the mass of Twelfhynd *Thegns*, though the Danish wars must have hastened this amalgamation between the two races, every man who fought for the English king being willingly reckoned as "an Englishman." So at a later period Dane and Saxon, long standing out almost as separate people, soon blended into one race after the Norman Conquest. Every vestige of different origin must have died out with the substitution of the *neah-gebur* for the *neah-mæg*, and wherever the descendants of the different races held their lands by the same tie of military service, were joint "sureties" for each other in the same *borh*, or shared in the cultivation of the allotted portion of the *Vill*, the recollection of a different ancestry must have passed away, and all were equally known as "Englishmen."*

The Mercian Law tells of the time when *Hlaford-socn*—or Commendation—had converted the Twelfhynd Gesithcundman into the Thegn; whilst the aristocratic principle is strongly developed amongst "the North people" in the numerous gradations of rank rising, tier upon tier, above the groundwork of Ceorls and Wealh. There is the same difference in the valuation of the Thegn and the Ceorl as in that of the Eorl and the Læt amongst the Kentishmen, and the Adaling and Libertus amongst the

* "To gaful-gyldum gesette" is the expression in the Saxon translation of Beda for rendering the *Wealh* tributary, and the *Seatta* was the man to whom the land was *ge-set*, or let, not given as a property. He is not only found beyond the old mark between Wealh and Saxon, but also where the mark had been encroached upon in other quarters, without being granted out as landed property. The Cilt-*seattas* and Wocing-*seattas* (*Chron. Sax.* 777) had probably been planted in this manner upon land cleared from the Chiltern forest and gained from the Peterborough marshes.

Continental Angles; a fact which, with the little mention of the *Friling* in the Saxon code, suggests a suspicion that the Anglo-Saxon Ceorl, and his equivalent, the Saxon Friling, was not originally a *Leud*, or member of the dominant race with Allodial right, but an enfranchised Læt, a type of the Scandinavian *Leysing*, with whom, indeed, he was placed upon an equality in the Convention between Alfred and the Danish Guthrum.* There is not a doubt about the position of the different races in the northern Danelage. The Saxon and the Danish freeman were upon an equality in East Anglia, where the settlement of the latter resembled the occupation of the Roman provinces by the Burgundian or the Goth; but in the north the Scandinavian stands out, like the Frank, as the member of a dominant race, the *Holder* reckoned at twice the value of the *Thegn*, and the *Eorl* at double the *worth* of the *Ealdorman*.

When Harold "of the fair hair" laid the foundation of the Norwegian kingdom, wherever he extended his authority he is said to have put an end to "Odal-right," all the Bonders, rich and poor alike, being obliged to pay land-tax to the king. Over every *Fylki*, or province, he placed a royal Jarl, to administer "Law and Land-right," and to collect *Scat*, or land-tax, one-third of which became the prerogative of the Jarl, who was bound in return to maintain sixty *Hermanna*, or men-at-arms, for the royal service. Under every Jarl were four or more *Hersirs*, or barons, each with a *Veitzlo*, or benefice, held by the tenure of quartering the king upon his royal progresses, of the original value of 20 marks—equivalent to the 20*lb.* knight's fee, as the mark was the northern pound—

* The *Frilings* amongst the Continental Saxons were associated with the Læts in the rising of the *Stellingas* against the nobles—the *Athelings*. There is not a trace of allodial right amongst the Anglo-Saxon Ceorlcundmen in historical times, except in Kent; and the Twyhyndman looks more like the *One*-hyndman enfranchised than the original Atheling or Odaller. If this conjecture is correct, it would account for the absence of allodial right as well as for the wide distinction between the Twelf and Twyhynd classes. I do not extend the remark to the Frison communities, which I suspect were absorbed as Ceorls, principally upon the Eastern coasts; but the subject is far beyond the limits of a note.

for which the *Hersir* was bound to provide twenty men-at-arms.* Such was the earliest foundation of a royal nobility in Norway, and the Bonders, taxed and deprived of "Odal right," complained that they were changed from a class of proprietary nobles into *Land Bu*, or tributary tenantry; though the vast increase of the tributes, resulting from taxing the hitherto untaxed Odal lands, in which the royal Jarls and other royal officials shared, rendered the change as agreeable to the king's followers as it was distasteful to the Bonders. The earliest "royal Law," the *Heidsevis Log*, is attributed to Harald's father, Halfdan the Black.† All such "Laws" may be very safely connected with the establishment or extension of the royal authority, and the conversion of the *Leud* into the Dependant; and as none are attributed to Harald himself, he may have only carried out successfully the intended policy of his father. The earliest introduction of the royal benefice, and of the hereditary noble by service, into Norway, may be dated, therefore, about the middle of the ninth century, when a similar process would appear to have been in progress in Denmark and Sweden, the result being to pour a flood of discontented "Odallers"—Kings, Jarls, and Holders—upon the shores of Britain, Ireland, and the Continent. Hitherto the excursions of the Northmen had been generally confined to the attacks of the *Sumarlidi*, passing adventurers who swept the country of all they could lay hands upon, and returned home with their booty at the close of the summer's cruise; but from this date the malcontents thronged in multitudes as permanent settlers, accompanied by their wives and children, and flying from the revolution introduced by the substitution of the royal authority for the ancient order of things. Amongst the earliest fugitives were the colonists of Iceland, and as they abandoned their native country

* *Heimsk. Har. Harf. Saga*, c. 6. After various fluctuations, in which the Bonders were alternately recovering and losing "Odal Rett," Olaf the Saint seems to have finally established the authority of "the Court," and fixed the exaction of *Thegn-gilldi*, or land-tax, and *Hef-gilldi*, or poll-tax, as permanent rights of the crown. *St. Olaf. Saga*, c. 55, 146.

† *Heimsk. Halfdan Saga*, c. 8.

rather than submit to such encroachments upon their "Odal right," it is only natural to infer that they carried with them the laws and customs hitherto prevailing under the early Allodial system. Accordingly in the old Icelandic code of the Gragas there is no trace of any division of rank; no line drawn, as amongst the Germanic tribes, between the *Nobilis* and the *Ingenuus*, the Freeman's *Baugatal* being simply reckoned at 3 marcs, doubling as usual the valuation of the Libertus. Every "full-born" Northman was an Odaller; "full-born" was equivalent to noble; for as the first step in the extension of the royal authority was invariably to deprive the Bonders of their "Odal right," it is very evident that before the period of the royal innovations every Bonder must have been an "Odalsmand,"—he must have held that right of which he was subsequently deprived. And thus amongst the ancestry of that numerous body of our own population which can be traced to a Scandinavian origin, the King, the Jarl, the Holder, and the Leysing, are alone to be found, for they, like the Icelanders, fled from the encroachments of the royal authority.

In the oldest code amongst the Swedish laws, the *Gutalag*, or law of the island of Gothland, a very similar arrangement is distinguishable, the only classification being *Gutnisc* and *Ogutnisc*—Goth and alien—every full-born Goth being reckoned at the usual 3 marcs "in gold;" but in the earliest *Gulathing*, or law established at the Norwegian *Thing* held in the island of Guley, a different arrangement is found, and the results of the introduction of the royal authority are plainly visible.*

* *Heimsk. Hakon Goda Saga*, c. 11. The older Gulathing is supposed to represent the amalgamation of the *Heidsœvis Log* of Halfdan with the Gulathing and Frostothing of Hakon Adalsteen, the son of Harald Harfager, who was brought up at the court of Athelstan, a connection which may be supposed to have exercised a considerable influence on the royal enactments. The promulgators of the code, however, as it now stands, were kings Magnus and Olaf, sons of Harald Hardrada, and Erling, Jarl of the Orkneys, which places it between 1066 and 1069; for Magnus only survived his father, who fell at Stamford Bridge, for three years. In the later Gulathing, dating from 1294, the laws which the *Lagamen* swore to observe were those of St. Olaf.

The *Frigivenman*, or Libertus, figures as usual at half the valuation of the free born Norwegian Bonder; the Odalsmand, the Lænsman, and the Jarl, rising in the gradations of a royal nobility above the unprivileged classes of the community. The *Manbote* at this period for every Norwegian enjoying "Odal Rett," now meaning the privileges of nobility, was 18 marks of gold, which, according to the reckoning of that time would amount to 144 marks of silver, the identical fine which was paid *in pounds* for a breach of the king's peace in Danelage. A fine of 40 marks of silver appears to have prevailed very generally throughout the northern kingdoms as the usual *Manbote* for homicide. This sum appears in the Upland and West Gothland codes amongst the Swedes as well as in the Jutland laws; it is traceable in both the Gulathings—for in the later code the fine of 13 marcs 8 ortugas for homicide, or for selling a freeman into slavery, is the royal *third* of 40 marcs—and it was brought by the Conqueror into England as the Wergild paid to the king for the slaughter of a Norman.* The Northmen, however, never appear to

* The sum occurs in various places as forty-six marks, but as six were paid to the relatives, or to the lord, the fine paid to the king was forty marks. William is said to have wished to establish the laws of the Danelage throughout the kingdom, on account of their identity with Norman law. The customs originally introduced into Normandy by Rolf Gangr must have been Allodial, and were probably not very dissimilar from those which were carried into Iceland. The northern rovers always proclaimed their complete equality; they were all Odallers, and the expressions applied to the original division of the land by Rolf, "illam terram suis fidelibus *funiculos* divisit," point to an equal allodial division "roped out" according to ancient custom. Sismondi, indeed, has attributed to the first duke of Normandy the introduction of a perfect system of feudalism, to which opinion Sir Francis Palgrave demurs; and I quite agree with the latter authority, for as the *Feud*, or hereditary Benefice, was still unknown beyond the Eider in the fifteenth century, it could hardly have been introduced into Normandy from that quarter in the tenth. It was Richard *sans-peur* who first cancelled "odal right" in Normandy—a very different process amongst the Normans planted as a noble class in their newly acquired territories, and amongst the Odal-Bonders of Scandinavia—and as it was Harald the Dane, the grandfather of Canute, who after his victory over the Franks "took legal possession in the young Richard's behalf . . . . . and exacted the universal obedience of the Norman people," it was from this quarter, probably, that the novel institutions of Scandinavian royalty were introduced, which would account for the similarity between the customs of

have passed through the intermediate *phase* of great aristocratic communities like the majority of the Germans; the absence of the Læt, and of the distinction in their earlier Wergilds between the *Nobilis* and *Ingenuus*, point to a different order of things. Guthrum's Danes were all equal, and the Norwegian followers of Rolf Gangr were on a similar footing of equality as "Odallers;" and as the Nobilis and Ingenuus, with the unequal division of land according to rank, may be traced amongst the Germans in the days of Tacitus, so the germs of that state of society which seems to have remained in force amongst the Northmen until the middle of the ninth century, in many points resembling that already noticed amongst the Frisons, seem plainly visible in the equal distribution of the land described by Cæsar, "cum suas quisque opes cum *potentissimis* æquari videat."*

Howel Dha, the contemporary of Edward and Athelstan, appears to have enacted much the same part amongst the Welsh as Hakon Adalsteen, and Olaf the Saint, amongst the Norwegians, the earliest regulations of "the Court" having been always attributed to the first-named king. The "noble by birth" is as plainly distinguishable in the Welsh as in many of the older German codes, the *Pencenydl*, the *Breyr*, or *Mabuchelwr*, and the *Boneddig*

Normandy and the Danelage, where, in the year before the Conquest, "the Laws of Canute" were still in force (*Chron. Sax.*, 1065). From the great dearth of early charters in Normandy, and from the non-existence of the hereditary feud in the Norman kingdom in Southern Italy four centuries after its establishment, it is very doubtful whether the Benefice had been converted into the Feud at the time when the ancestors of the Normans of Italy quitted their native duchy. *Vide Palgrave Hist. Norm.*, vol. 1, p. 691, *et seq.*; vol. 2, p. 482, 534.

* *Cæs. de B. G.*, l. 6, c. 22. Cæsar appears to have been most familiar with the Suevi, and his description may apply to that particular branch of the Germanic people which seems to have approached most nearly to the Scandinavians. Sufficient time, however, had elapsed for many changes to have occurred between the era of his conquests in Gaul, and the days in which Tacitus alluded to the second consulate of Trajan as a past event. But at a much later period there was a wide difference between the Franks and the Frisons in the same age; and as each authority has probably given a faithful description of the peculiar phase of Germanic society which was brought most particularly under his notice, neither should be contrasted with, or corrected by, the other.

corresponding with the three gradations so often found amongst the Germans, whilst the *Alltud*, rated at half the valuation of the *Boneddig*, resembles the *Læt*. Side by side with the "noble by birth" appears the "noble by service," the royal favour conferring the usual advance in rank, the lowest member of the king's household being raised above the Boneddig; whilst the *Swydder y Llys*, or court official, is placed upon a footing with the noble by birth; and the highest officer of the household who was not of royal birth, and the royal *Maer* and *Cynghellwr*, attain the same footing as the Pencenydl—the *Primus*, or chief by right of blood. One important feature in the Welsh system, however, must not be passed unnoticed. Except in the solitary instance of the *Distyn* it is the *Boneddig* and not the *Breyr* who takes personal service under the *Brenhin*, a fact which displays the comparatively limited influence of the royal authority amongst the Welsh. The acceptance of an official situation under the king raised the noble to an equality with the head of his race—the Pencenydl; but the acceptance of an office about the royal person only placed its holder upon a footing with the territorial noble. Wherever "the Court" was really powerful, the officers of the royal household ranked with the foremost of the land.

But perhaps one of the most remarkable features in the Welsh laws is that separation of the judicial office from the military, which is displayed in the appointment of a Maer and Cynghellwr to exercise joint authority over every royal *Commot*, or collection of twelve *Maenawls*; a separation which may be looked for in vain amongst the Teutons, both offices having been united in early days in the Comes, Graphio, or Judex Fiscalis, appointed to exercise undivided authority over the royal *Fiscalini*. The whole administration of justice amongst the Gauls was in the hands of the Druids, and accordingly the *Vergobreith*, annually elected amongst the Ædui to the supreme magistracy—a personage equivalent to the Welsh *Breen-hyn*, or Senior Brehon—although not a Druid, was as sacred a character during his year of office, confined

strictly within the limits of his own confederacy, and consequently incapacitated for the time from exercising military authority; in other words, he was a temporary member of the sacerdotal order. As the administration of justice was one of the prerogatives of the sacred caste, it would appear as if the Cynghellwr had once represented the Druid, or the noble enrolled amongst the Druids during his tenure of judicial office, whilst the Maer was the Eques, or military noble; their types being easily recognisable in Gaelic Scotland as the Maor or Thane, and the Deempster—the *judex* who so often makes his appearance in the early charters—who were appointed, as amongst the kindred Celts of southern Britain, to exercise a divided authority over the tenantry of the royal Vills.*

When the younger sons of Malcolm Ceanmore began to lay the foundations of the feudal kingdom of Scotland, they naturally introduced the system with which they were most familiar, the Anglo-Norman feudalism of the court of Henry the First, of which the various English "customs" were, up to a certain point, the basis. David and his successors, gradually transferring the preponderance in the kingdom from the north to the south, must necessarily have adopted the southern law as the groundwork of much of their legal fabric, not introducing a novel system borrowed entirely from their southern neighbours, but making use of the laws and customs of their Lothian subjects, long familiar to the population between Forth and Tweed. Thus the *cro*, or Wergild, familiar in principle to all the various races of the Scottish kingdom, appears to have been adjusted upon the basis of the old Anglian valuation, the Thane being reckoned at 300 ores of 16

* *Cæs. de B. G.*, l. 1, c. 16; l. 6, c. 12-14; l. 7, c. 32-34, 67. Compare vol. 1, c. 2. *Breith*, both in Gaelic and Welsh, means law, and the *Vergobretus* was simply the *Fear-go-breith*, or *Gwr y cyfreith*, the judge, or *Lagaman*, known amongst the Irish as the *Breithimh*, a word generally written *Brehon* and pronounced *Breen*. Unlike the Gael, the Cymri spell as they pronounce, and accordingly the head of the Cymric state, the *Brenhin* or *Breen-hyn*, was no other than the Senior Breen, or supreme judge of the people. The captors of Rome, as Niebhur has remarked, were under the rule of a *Breen*, whose title was latinized *Brennus*.

pence, or 20lb.* The arrangement, in other respects, was upon the Celtic principle of *thirds*—a principle, indeed not confined exclusively to the Celts, for it is equally traceable amongst the Frisons—the son being assessed at two-thirds of the valuation of his father; and his descendant, if he did not attain to his father's rank or station, falling into a lower grade, until all who could not count a Thane as their grandfather, or were not the actual holders of a portion of land under a Thane, and were thus reckoned as Ogtierns, or lesser lords, merged in the commonalty. To the development of this system may be traced many of the clans and "lesser houses" in Scotland, which, though contributing largely to "the Commonalty," especially in later times, mostly represent offshoots branching out in the olden time from the greater "overlords," and originally planted on the land as *Tigherns* and *Ogtierns*. At an earlier period, when the singular and peculiarly Celtic principle, entailing a double claim upon, and an alternate succession to, the headship of the family, was in full force, the application of the same "descending scale" will explain many a contest between near relatives, each struggling to exercise in turn the ancestral authority, and thus preserve their prerogatives in the family. Six kings of the MacAlpin dynasty followed each other, in peaceful and alternate succession between the families of Constantine the First and Aodh, until a contest arose between the sons of the first Malcolm and of Indulf, each family endeavouring to limit the succession to their own immediate line; as all pretensions to the crown would have been lost had the representative of

* The valuation of the Rusticus or Churl, forty-eight ores, was six marks, recalling the fine of six marks in Eric's Zealand laws, and the six marks paid to the relatives by Norman law. The fine of *eight cows*, or 24 ores, continually to be met with in the Scottish laws, was evidently the half leodgild or "manwyrth" of three marks; and if the price frequently paid for two serfs—three marks—was their valuation, then a *thrall*=twelve ores; a *manwyrth*=three marks; a *churl*=six marks, or two manwyrths. This is Anglo-Norman, Anglo-Danish, or Anglo-Saxon, rather than Gaelic, whilst the regulation of the valuations by *thirds* is Celtic, pointing, apparently, to an arrangement, probably of the reign of David, combining the principles of both assessments.

the race sunk permanently to the position of "an Earl's son." A similar contest is traceable in the family of Moray, and had the line of Malbride succeeded in monopolizing the headship of the race, the representative of Finlay would have sunk to the position of a Thane.

Side by side with the valuation of "King Henry's law" the *Gailchin* or *Gelchach* held its place, evidently the equivalent of the Welsh *Sarhaad*, as the *Merchet* answered to the *Gobr y Merch*, or fine payable on the marriage of the vassal's daughter, the extension of the latter to every rank amongst both divisions of the Celtic race, testifying apparently to the complete absorption of the earlier *duchas*, or allodial rights, in the crown.* In the valuation of the married and single woman the proportions differ from the Welsh, and there are no means of testing them with the Anglo-Saxon; whilst the uniform fine of 180 *cows* for homicide, which prevailed "throughout Scotia," resembles the Scandinavian *Manbote*, and the fine for a breach of the king's peace in Danelage; but it would be useless to hazard any conjectures as to the extent of the strictly Gaelic element traceable in these laws, in connection with the Anglian, the Cymric, and perhaps the Norman, until the publication of the Brehon Code has thrown more light upon the institutions of the kindred Gael of Ireland; amongst whom the name of *Earaic*, or man-payment, approaches still more closely than *Galanas* to the Teutonic *Wergild* and *Manbote*.†

* Some absurd theories, long since exploded, were once grounded on the *Merchet*. It probably arose out of the necessity of *endowing* a wife in order to render the marriage legal (*Vide Appendix F*), and as no one could do this who had not the *fee-simple* of his land, without the permission of his lord, the *merchet* was probably the fine paid for this permission. It was known as well in England and on the Continent. (*Vide Hailes' Annals*, vol. 3, Ap. 1, where the subject is discussed at length.)

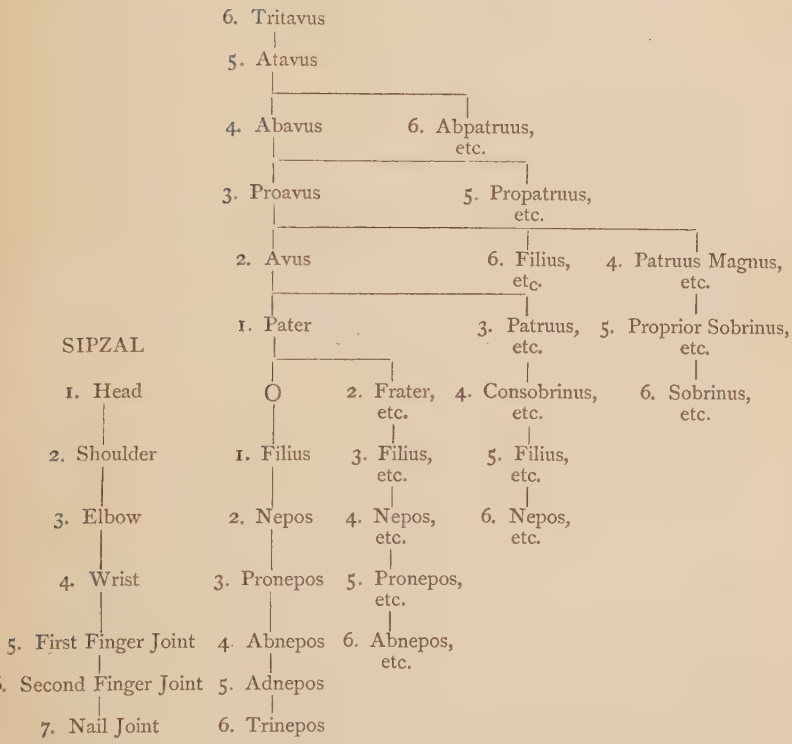
† *Earaic* seems to have been derived from *Fear*, man, and *aic*, payment; the initial letter having disappeared, as in *Uladh*, *Andalusia*, *Ipswich*, and other examples. St. Patrick paid as much as fifteen "manwyrths" to secure the protection of the authorities of the districts through which he passed. "Vos autem experti sumus quantum ego erogavi *illis qui judicabant* per omnes regiones quas frequentius visitabam. Censeo enim non minimum *pretium quindecim hominum* distribui illis . . . . non me pœnitet, nec satis est mihi; adhuc impendo, et super impendam. Potens est Deus; ut det mihi postmodum, ut me ipsum im-

pendam pro animabus vestris." *Confess. Patr.* (*Rer. Hib. Vet. Scrip.*, vol. I; *Proleg.*, pt. I, p. cxvi.) There must have been some sort of settled government where there were "judges" and a legal "man-wyrth," and where an *aavena* could thus obtain the protection of "the constituted authorities." On one occasion the saint was seized, plundered, and put in bonds, but released after a fortnight's captivity, with all that had been taken from him, through the intervention, apparently, of one of his powerful protectors. As on another occasion he alludes to the privileges of free-birth, which he had resigned through becoming "a stranger and sojourner" in Ireland, it is evident that there, as elsewhere, the *alien* was ranked upon a footing of inferiority. The simple narrative of St. Patrick, in which he details his troubles and his difficulties, stands out in striking contrast with the legendary traditions of later years.

Appendix F.

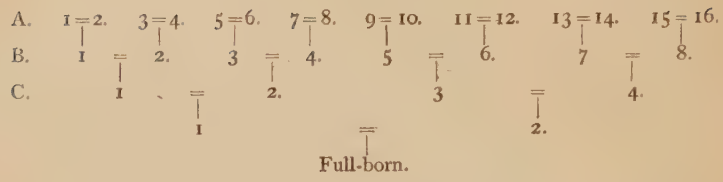
THE KIN.

ROMAN COGNATIO.



The Italian noble counted his four quarterings from the completion of the Cognatio. From the latter part of the eleventh century, the Canon Law counted *two* degrees for *one*, placing the Sobrinus, or second Cousin, in the *third* degree, the Consobrinus in the *second*, and, until the Fourth Lateran Council, including all the descendants of the Tritavus, up to sixth cousins, in the Canonical Cognatio. The *Sipzal* was the Teutonic method of counting relationship, the *Hand* originally meaning the complete *Mæg*. He who could count it "pure blood" was Full-born to Odal-right.

QUARTERINGS.

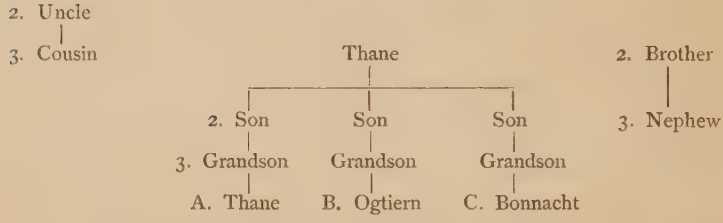


A. The German noble with 16 quarterings, and the Scandinavian *Holdr* of later times.

B. The French noble with 8 quarterings.

C. The old Allodial *Vier Anen*, conferring Odal right, the Frank Ingenuus, the Scepenbar Saxon, and the Spanish Hidalgo, with 4 quarterings. The man of three "perfect generations."

THE SCOTTISH THANE.



All within the fourth degree composed the *Mæg*, known amongst the Welsh as *Aelodeu*, who were entitled to be supported by the Senior of the family. A. represents the fourth in descent carrying on the Thaneship. Before the introduction of the Charter he would have now acquired the *jus hereditatis*, or Odal right. B. represents the second cousin, whose ancestors had not held the *Seniority*, now holding under the head of the family (like the tenant by *homage* instead of *fealty*, in the Norman *tenure par parage*) and founding a Lesser House. In early times probably all the connections of a *Cen-cinneth* had a right to be thus provided for. C. represents the landless relative, who was latterly reckoned amongst the *Carles*, though in early days "a gentleman." All the brothers had originally a claim to hold in turn the office of *Senior*, and a glance at this table will explain the reason why such a principle of succession, wherever it was in force, so often entailed a contest.

It would be difficult to form a true conception of the state of society once existing amongst the people of Teutonic as well as of Celtic origin—a state of society that is sometimes almost regarded as a peculiarity confined to the latter race—without some knowledge of the nature of the tie by which the community was bound together in the olden time, and which, though existing at some period amongst the ancestry of nearly every people, and more or less traceable amongst many, is most clearly to be distinguished amongst those of German and Scandinavian origin. At the root of the Germanic system lay the *Mæg*, Cognatio, or Clan, composed of a certain number of *Hirds*, or *Familiæ*, each family being in the immediate "*mund*," or under the protection, of its natural head, the father, *Ealdor*, or Senior; on his death breaking up into as many "families" as there were male descendants in the first degree, or in other words *sons*. The condition of the son during the lifetime of his natural *Ealdor* was up to a certain age, as Tacitus has shown, that of a *cnicht*, *knabe*, or *sven*, resembling that of the *gwas* or *gillie* amongst the Celts—the latter word being connected apparently with the Latin *filius*—and in later times, when the great man's *Hird* included a number of *cnichts* not necessarily united to him by any real tie of consanguinity, their position was identical with that of the son in primitive times, and they were in complete subjection to their *Ealdor*, who in turn was bound to extend to them his *paternal* protection. Thus the name of *Senior* has penetrated into various European languages as the equivalent of the English *Lord*, the *Junior* having supplied our own language with such terms as *knight*, *knave*, *swain*, *vassal*, *gilly*, and various others, originally implying a dependent state of consanguinity, and latterly a condition more or less of dependence or inferiority. On the death of the Ealdor of the family each separate *Hird* blended in the *Mæg*, the equivalent of the Roman Cognatio, every member of which was bound in the *Mæg-borh*, or mutual bond of protection and defence. The *Mæg* was originally answerable for every individual member, for individuality in the

modern sense was unknown, and every one may be described as "*on bail.*" The glory or infamy of each member reflected credit, or drew disgrace, on the whole *Mæg*, on whom it was therefore incumbent to avenge the injuries or atone for the crimes of the individual, receiving or paying the whole, or a certain portion of the allotted fine, according to the circumstances of the case. Every *Mæg* was entitled to share in the division of the land, and had its allotted station in battle, closely resembling in this point the early Israelites, the "long-haired Achæans" of the Homeric age ranged κατα φυλα κατα φρητρας, and the military order of the ancient Romans—for the law that the *bona castrensia* of the soldier dying on service intestate should go to his *Vexillatio* and *Legio*, surely points to a time when he actually stood in line with his *Mæg* and *Cyn*, his Cognatio and Gens. At a certain limit the *Mæg* ended and merged in the *Cyn*, the Roman *gens*, of which the head was the *Cyning* or *Kon-ungr*—the child or representative of the race—the union of a number of *Cyns* under their *Cynings* or *Principes* in the olden time constituting a community—a *Thiod* or *Leod:* for the *kingdom* arose out of a *Comitatus.**

The *Mæg* necessary to constitute a state of perfect freedom seems to have been originally confined, irrespective of parents and children, to the brothers and uncles; in other words, it required "three descents," and the existence of two free grandfathers. In the rules laid down for the receipt or payment of the Wergild, in the reign of Edward the elder, eight of the paternal and four of the maternal kindred formed the *Wer-borh*—a division as general amongst the Celts as amongst the Teutons—though the paternal relatives were alone entitled to the *Halsfang* on

* *Tac. Germ.* 25. *Cæs. de B. G.*, l. iv., c. 1; l. vi., c. 22. *Digest.*, 38, 12. "Domus officia uxor et liberi exsequuntur," are the words of Tacitus. This period of service was probably ended by the assumption of arms on arriving at a certain age, "sed . . . non ante . . . quam *civitas* suffecturum probaverit. Ante hoc *domus* pars videntur, mox reipublicæ," c. 13. Where the donor of the arms was not the natural *Ealdor*, whether "princeps pater aut propinquus," but a chosen *Ealdor*, the recipient became a member of a *Comitatus* instead of a *populus*—a *Gesith* instead of a *Leud*.

the ground of their being "*binnan cneowe*"—*intra genu*, or within the degrees of blood relationship.* A *mæg-borh* of this description was essential to the *Liber*, or complete Freeman; hence probably the reason for retaining the Freedman and his immediate descendants in the *mund-borh* of the patron, state, or king; for though in early times the *Denarialis* held his *mansus* "as freely as any Frank," three generations of freedom were obliged to pass away before his descendants acquired hereditary right, as it was only the third in descent who could have a free *mæg*—whose *uncles* were freemen.† The same principle continued in force under the system of tenure by military service, and as the *jus hæreditatis*—allodial or odal right—was only acquired by three descents of freedom, so in the eleventh century, none without three descents of military service were entitled by imperial law to the *jus beneficiale*.‡ Nor was it confined to allodial and military tenure; it was equally applicable to the ignoble and servile classes, giving "native right" to all who were attached to the soil. Thus amongst the Cymri, after the lapse of three genera-

* *Ed. and Guth.*, 13. A similar limit is traceable in the law of succession to allodial property amongst the Franks, which, failing direct heirs, passed to the parents, brothers and sisters, *aunts*, and then to the next of kin on the paternal side. *Lex. Sal.*, tit. 62. *Lex. Rip.*, tit. 56. The preference of aunts to uncles confirms the remark of Tacitus about the fondness of the Germans for their sister's children. The Salic law was only applicable to *Salica terra*—*Seleland*—the royal grant, whether Benefice or Frank-alleu-noble, the older custom lingering in Champagne, where to account for the anomaly of land passing "to the spindle-side" in the feudal era, it was attributed, though probably only a relic of the old allodial custom, to the great loss of the Champenois at the battle of Fontenay. A passage in Alfred's will is sometimes quoted in support of a theory that succession to landed property amongst the Anglo-Saxons was limited to heirs male; but the whole passage refers to *Bocland*, which passed according to the will of the first holder, and Alfred expressly alludes to the directions of his grandfather Egbert. From the general absence of allodial tenure, however, amongst a Gesithcund class, the succession was probably in most cases limited to the "spear-side." Amongst the Israelites the limit of "the kin that is near" seems to have been very much the same as amongst the Germans. *Levit.*, c. 21, v. 2, 3. *Numb.*, c. 27, v. 8 to 11.

† *Capit. Carl. Mag. ad an.* 803, sec. 8, 9. (*Canc.*, vol. 2, p. 320.) *Ducange* (*Heinschel*) *in voc. Man. per Den.*

‡ *Lib. de Ben.* 4, 5. (*Canc.*, vol. 3, p. 113.) "Omnes qui non sunt ex homine militari ex parte *patris eorum et avi* jure carent beneficiali."

tions, the descendant of the original *Alltud*—or *alien* unentitled by right of blood to share in the district—was reckoned as a *Briodwr*, acquiring "native right" in the district from which he was henceforth irremovable, with a claim to an equal allotment of the land with the rest of the "vicinity," and a joint proprietorship in the family house.* A similar principle is equally traceable in England and Scotland, accounting for the numerous servile *pedigrees* in Anglo-Saxon and Scoto-Norman charters. This intimate connection between descent and "right of blood," though it is best illustrated by the example of the Germans, was very far from being confined to any one nation, and the "three generations" necessary amongst the Massiliotæ to qualify the citizen of alien origin for admission amongst the Τιμουχοι, point to the existence of a principle well known, probably, and prevalent in many quarters besides Marseilles†—a principle acknowledged amongst the Romans in the days of the *Libertus, Libertinus,* and *Liber,* and particularly observable amongst the chosen descendants of Abraham. Three generations, by the Mosaic Law, qualified the descendant of the Egyptian or the Edomite to "enter into the congregation of the lord"—and the limits of the Hebrew and the Teutonic *mægs* appear to have been identical—but not even in his *tenth* generation, not even after *six pure descents* had eliminated every taint from the blood, could the descen-

* *Leg. Wall.* (*Wootton*), l. 2, c. 1, sec. 72; c. 16, sec. 10; c. 17, sec. 7, c. 18. The Scottish serfs were either "nativi de avo et proavo"—for as the *third* was the first to *bequeath*, so the *fourth* in descent was the first to *inherit* "right," whether free or native—or aliens, removable at will, who in process of time might become "inborn;" or the "liber homo" who in open court gave himself up "per crines anteriores capitis." Pulling the forelock is still a species of salute very prevalent amongst the peasantry. If the latter kind of serf afterwards denied his servitude and his lord proved it, the lord was entitled to deprive the delinquent of all he possessed except four pence, and to *pull his nose* in open court! Hence, perhaps, the indignity attached to pulling the nose, as a method of claiming a runaway serf. (*Quon. Attach.*, c. 56.) The form "Brachium in collum posui et per *crinem capitis mei* coram præsentibus hominibus tradere feci," with an additional allusion to "disciplina super dorsum meum" occurs in *Form. Bign.* 26 (*Canc.*), so that the custom may have been a feudal innovation in Scotland.

† *Strabo*, l. 4, p. 179.

dant of the Moabite or of the Ammonite be reckoned as a child of Abraham; a prohibition interpreted by Nehemiah to mean total exclusion, and exactly tallying with the expression supposed in the north to indicate undying enmity —"hatred *till nionde knæ*"—to the ninth degree; with the words, scarcely needing translation, in which the northern St. Margaret is supposed to have formally renounced her kindred, "*al my kun I forsake to the nithe kne;*" and with "the nine degrees of kindred" within which all connected with an Earl of Fife might claim the privileges of the Clan MacDuff. So thoroughly indeed were the Israelites impressed with the necessity of pure descent, that it was carefully handed down to posterity that Noah, the common ancestor of all the later race of men, was "perfect in his generations," in order that no taint of antediluvian serf or alien might linger upon the blood of their father Abraham.*

* *Deut.*, c. 23, v. 3, 7, 8. *Neh.*, c. 13, v. 1. *Gen.*, c. 6, v. 9. *Ihre in voc. Knæ.* For the "Lex Clan Mac Duff," *vide Innes'* "*Sketches*," *etc.*, p. 215. Τελειος ἐν τῃ γενεᾳ αὐτου, is the rendering of the passage from Genesis in the Septuagint. Γενεα means "birth, descent," and is especially used by Homer for *noble* birth. Εκ γενεης "according to *rank;*" γενεης και αἱματος "of birth and blood." It was also applied to the *breed* of horses. Γενεαλογια, the science of *pedigree.* Τελειος implies perfection or completeness of a physical rather than of a moral character. Τελειος ἱππος, a full-grown horse, opposed to πωλος, a colt. Τελειος ἀνηρ, paterfamilias, the Gaelic *Lanamain*, or *complete* man; for the married state was regarded as complete or perfect, and the δομος ἡμιτελης was the *im*perfect, or widowed house. That the Septuagint translators understood it in this sense is evident from their rendering the word in *Gen.*, c. 17, v. 1, which is "perfect" in our version, and "perfectus" in the Vulgate, not by τελειος, "physically perfect," but by ἀμεμπτος, "morally blameless." The word for γενεα in the original Hebrew is *Doroth*, the plural of *Dor*, which in the singular, like its equivalent "generation," may be explained as "the contemporary generation," or "men of the same age;" but it is impossible to extract such a meaning in either case from the plural, nor is *Doroth* ever met with in such a sense in any part of the Old Testament. By changing one adjective for another, and substituting a singular for a plural, modern commentators may explain the passage in question to mean "upright in his generation;" but such is not the meaning of the words as they stand, nor did the compilers of the Septuagint understand them in such a sense. Τελειος εν τῃ γενεᾳ αυτου, whether applied to man or horse, can only mean "thoroughbred;" and the great value of the Septuagint consists in its being "the authorized version" 2000 years ago, when the Jews were a people, living strictly by the Mosaic code, and its compilers were thoroughly impregnated with the ideas of the time. It is

The *Mæg* lay at the root of perfect freedom, and none without it could attain to allodial right; but the "Odaller" of early times was not identical with the "Odalsmand" of later days. Every "full-born" freeman could claim allodial right, but the *Cyn* was the source of nobility, and originally only the man with a *Cyn*, or *gens*, was the "gentilis homo"—the gentleman. Nobility of this description was inseparably connected with descent—with descent from the gods in the old heathen times—inalienable from

highly probable that Mr. Thorpe, and other Anglo-Saxon scholars, could render Beda's History into excellent Anglo-Saxon; but it is extremely doubtful whether without the assistance of the old Saxon version, they would translate *possessio* by *bocland*, *familia* by *hyde*, *comes* by *gesith*, or *miles* by *cyninges-thegn*. Who in the present day would translate the English *tenant* by the French *hoste*, the corrupted form of the old Latin *hospes?* So in rendering the original Hebrew into a Greek version, the compilers of the Septuagint are far more likely to have preserved the ideas of a bygone period, than the most learned commentators of comparatively modern times, whether Jew or Gentile. The author of the Saxon version of the Old Testament seems to have had no difficulty in understanding the true meaning of the passage, which was quite in accordance with the spirit of an age in which it was a Canon, "ut ingenuus cum ingenua conjungi debet;" for he renders it "fulfremed on his *mægthum*," perfect in his *relationships*. In the well-known passage in Isaiah (c. 53, v. 8), even though the Hebrew *Dor* is in the singular, yet Justin in the second century seems to have understood its equivalent γενεα in the meaning of "descent" rather than "contemporary generation." In the following passage for instance, ἵνα δὲ μηνύσῃ ἡμῖν τὸ προφητικὸν πνεῦμα, ὅτι ὁ ταῦτα πάσχων ἀνεκδιήγητον ἔχει τὸ γένος . . . . ἔφη οὕτως "τὴν γενεὰν αὐτοῦ τὶς διηγήσεται;" Again, in his Dialogue with Trypho, Ἡμῶν οὖν ταῦτα ἀληθῶς συντιθεμένων, καὶ τοῦ λόγου λέγοντος "τὴν γενεὰν αὐτοῦ τὶς διηγήσεται;" οὐκ ἤδη καὶ νοεῖν ὀφείλετε, ὅτι οὐκ ἔστι γένους ἀνθρώπου σπέρμα. And in another chapter, after again reciting the quotation, he adds, οὐδεὶς ἄνθρωπος ὢν ἐξ ἀνθρώπων ἀνεκδιήγητον ἔχει τὸ γένος. (*Just. Mart. Apol. I.*, c. 51. *Dial. cum Tryphone*, c. 68, 76.) Had Trypho understood γενεα in the sense of "contemporary generation" it is very evident that the foundation of Justin's argument would have been overthrown; but he does not dispute the meaning of "descent," nor does the Jew of the second century appear to have been familiar with the peculiar application of the prophecies adopted by the Rabbins of a later age. Without some conception of the universal and deeply-rooted feeling in the ancient world, connecting the priestly office with unblemished descent, it is impossible to realise the full force of the expression ἀγενεαλογήτος—without the necessary descent—applied to Melchisedec in the 7th chapter of the Hebrews, aimed expressly against the principle of an inherited priesthood, confined to pure blood alone. Yet St. Paul himself was no leveller of obscure origin, but by birth a Roman citizen and "a Hebrew of the Hebrews"—a gentleman "perfect in his generations."

"pure blood," and not to be conferred either by community or king. None could be deprived of it except through taint on the blood; hence the terrible severity of the earlier codes, not excepting the Mosaic, against all offences entailing such contamination; and they little appreciate the spirit of *Caste*, inherent in all the populations of the heathen world, who represent a conquering race as mingling their blood at once by intermarriage with the conquered. Generations passed away before the noble of Visigothic ancestry was allowed to intermarry with the noble of Roman origin, though the two races seem always to have been on a footing of comparative equality; whilst the interdiction evidently remained in full force to a later period amongst the fierce northern races, who held the *Roman* and the *Wealh* as inferior beings, for as late as the Carlovingian Capitularies there were rules laid down for the *Law* by which the children of such unions were to live, whether *Salic* or *Roman*. Amongst the haughty Anglo-Saxons it passed into a canon of the church "ut ingenuus cum ingenuâ conjungi debet."* The regulations which are now regarded as the half exploded formularies of heraldry were once stern realities.

The children of the free-born were of three classes, the issue of the marriage of free-born parents being *Full-born;* of unmarried parents, *Illegitimate;* and of a connection between a freeman and a slave, *Servile*. No marriage could exist between the Servile and the Free, the degradation of a free-woman being atoned for in early times by a fearful death, which was latterly commuted into the hopeless servitude of herself and her children. Thus was the blood purified from taint, and the rotten branch severed from the parent tree. The Illegitimate shared to a certain extent in the property, but not in the "pure blood;" whilst the Servile, if freed in the public *Moot*, *Mall*, or *Thing*, became entitled to the portion which was then assigned to them.† By old Saxon law a

* *Capit. Theod. Frag. Thorpe*, vol. 2, p. 76.

† Such were the regulations in force amongst the Lombards in 643, and they will also be found in the northern codes. *Edict. Roth.*, c. 153 to 157. (*Hist. Pat. Mon.*)

Scepenbar man—one who was qualified to fill the office of *Scabinus,* which could only be held by the *Meliores Pagenses,* the *Bons Genz, Prcud'hommes,* or "good men of the country"—could not challenge his compeer unless he could enumerate his "*Vier Anen*" and his "*Hant-gemal;*" his full-born grandfathers and grandmothers, and his "family association."* Failing in this, the other might decline the combat, for he was not his equal in blood. Both were in other respects on a similar footing in the eye of the law; both were men of property and standing, *Scepenbar,* and free-born *Æthelings* or *Odallers;* but in the language of an earlier period, one was *Eorlcund* and the other *Ceorlcund.* The *Eorlcundman* was originally the "full-born" Ætheling, "perfect in his generations;" the *Ceorlcundman,* he who was not full-born, or whose blood had contracted some taint, or who was "imperfect in his generations." The first *Liber* in the family was the son of a *Libertinus,* so that the first "full-born" freeman was in the fourth degree, and the first who could count his *Vier Anen,* his full-born grandfathers and

* *Wachter in voc Schöppenbar.* The *Vier Anen* is explained in the following passage from the Latin version of the "Sachsen Spiegel." "Si qui in quatuor suis generationibus, hoc est ex duabus avis et duabus aviis, ac patre et matre, indiffamati juris est, illum in jure suo nemo infamare potest." Pure blood thus gave "right." The necessity of the *Vier Anen* is equally traceable amongst the Franks, he who was claimed as a *colonus,* and asserted that he was *ingenuus,* being bound to prove his father and grandfather *ingenui on both sides,* by the oaths of the usual eight of his paternal and four of his maternal kindred; or if his kindred were dead, by the oaths of "duodecim Francos Salios . . . . tales qualem se esse dixit" (*Form. Marc.,* Ap. 2, 4, *Canc.*) It would seem from this that he who had not his *Vier Anen,* and was not in the *mund* of an overlord, lost his "right" in early times, and became a *Læt.* The *Hant,* or hand, often meant the *Mæg,* or Cognatio, and, as *Hans,* gave a name to the *Hanseatic* League of associated towns. The Teuton reckoned his kindred by *joints,* the first degree, or man and wife, being the head; the second, or children—the first in the Roman method of counting—the shoulder-joint; the third, the elbow; the fourth, the wrist; the fifth, the first joint of the middle finger; the sixth, the second; and the seventh, the last joint nearest the nail; kinsmen in the seventh degree being known as *nagel-magen,* nail-kinsmen. The older *Mæg* was evidently comprised in the *Hand,* and the *Hant-gemal*—hand-association—probably meant the band of kinsmen who were bound to come forward as the *Wer-borh,* compurgators, and on numerous other occasions. *Wachter in voc. Hant and Sipzal. Ihre in voc. Nagel-magen.*

grandmothers, in the sixth. As for a free *Mæg* three, so for a *Cyn* six generations were necessary, and he who had these six generations pure and perfect—if every member of his *Cyn* could count his "full-born" ancestors—had attained to the highest degree of nobility in an age in which pure descent gave a title to land or office, but in which neither land nor office could confer nobility.

Wherever there was a "kingdom," wherever the duties and privileges of the elected magistrates of a community were centred in a reigning family, nobility was derived from the same source, and the maxim of the Visigothic law held good, "ingenita libertas *gratiæ dono* fit nobilis." A kingdom invariably implied the existence of a Gesithcund class, the Gasind, Antrustion, or Comes, sometimes standing side by side with, but invariably replacing, in course of time, the earlier Eorlcundman, whilst the *Læn* or Benefice, the reward of military service—the equivalent of the war-horse, the *framea*, and the *largæ epulæ* of the days of Tacitus—equally supplanted the earlier Allod. With the establishment of the principle of military service the *Liber* sooner or later sunk to the condition of a *Roturier*, differing but little from a *Læt*, and no longer able to rise into a higher class by purity of descent, but only by military service and royal favour. Such a change was always viewed with aversion by an allodial population, peopling Iceland and the British Isles with discontented Odallers; the results of its introduction amongst the Continental Saxons being visible, apparently, in the rising of the *Stellingas*, who claimed to live "by ancient custom." When the Odaller, or the Roturier, received a benefice in early times, as in the case of the Læt or serf who attained to freedom, a similar number of generations were required by Imperial law to elapse before his descendants acquired hereditary right, until the royal charter, in a still later age, conferred at once, by "royal grace," the rights of hereditary descent which could at one time only be attained by the slower "ingrowing" process of *Emphyteusis*. The law of the Benefice was in full force at one time amongst the Anglo-Saxons, and, after the Thegn

replaced the Twelfhyndman, though the Ceorlcundman could acquire "Thegn-right" by a benefice of five hydes, it was only by the "ingrowing" process of descent that his race became Gesithcund—enjoyed the *jus Beneficiale* —whilst the remark that the Thegn could "thrive to Eorl-right" points to the original connection between descent and "right."* Whilst land was plentiful, and divided "secundum dignationem," the man of long descent was entitled to the largest portion, and probably received it; and this qualification for "the prerogatives of an Eorl" evidently attached to pure blood and descent, long after it was in the power of the crown to grant land and dignities at will, though it latterly did not necessarily entail the grant of land. A clergyman in priest's orders is at the present time qualified to hold any "Benefice" from a rectory to a bishopric, but it does not necessarily follow that he attains even to the incumbency of a perpetual curacy. The perfect *Cyn*, therefore, still conferred the highest rank amongst the nobility which was composed of the military followers of a king, and, generations before the rise of Heraldry, the same pure descent qualified the noble for the rights and prerogatives of the highest class of nobility—he belonged to a family which in Anglo-Saxon phrase had "thriven to Eorl-right"—which in a subsequent age entitled him through his *Quarterings* to be enrolled amongst the highest orders of knighthood. Five degrees completed the *Cyn* amongst the Franks and their confederates, the Angles and Werns of Thuringia, and as the first Antrustion was not "full-born," the Frank noble of a later age was called upon to prove three descents of unblemished ancestry, he himself completing the fifth from the first acknowledged ancestor, and thus

* *North people's Law, and Ranks.* It is spoken of as the principle of a bygone age—"it was *whilom* the custom"—when descent alone conferred nobility; and in each case the Ceorl and his immediate descendants were to *thrive to* their five hydes, not to inherit them—they were a *Læn* or Benefice, not an Allod. Eight such Benefices—forty hydes—seem to have been at one time the portion of the noble claiming "Eorl-right." *Vide note on the passage.* The recollection of the old custom is still perpetuated in the English proverb, "it takes three generations to make a gentleman."

show his title to *eight* Quarterings. The *Cyn* amongst the eastern Germans required another descent, extending over the sixth degree,—"Beneficialis clypeus *a rege* descendit et *in septimo* deficit," though in the Allodial period it only reached to the fourth, as in the case of the *Scepenbar* Saxon, "olim observatur *ad quartum*"*—and accordingly the German noble was required to ascend a step higher than the French, and prove his title to *sixteen* Quarterings. Roman law prevailed in Italy, and as the Patrician of the Empire was required to show a perfect *Cognatio* of six descents of pure blood from the founder of a family before he could aspire to be *Gentilis*, the Italian noble was bound to prove himself a member of such a family, but only to show *four* Quarterings. In Spain, where not a little of the old Teutonic freedom lingered before the sixteenth century, the Hidalgo was only called upon to prove his *Vier Anen*, and also to show *four* Quarterings. In these heraldic regulations of a later age, now fast becoming obsolete—when "the six Houses," extended by some Heralds to nine, "to the nithe kne," marked the degrees of consanguinity—the shadowy reflection of a bygone state of society may still be recognised, in which the royal person was not yet "the fountain of honour," and when land was granted "secundum dignationem," such rank, *dignatio*, only being acquired by descent. The pedigree was then the actual title-deed, qualifying the man of pure blood to hold that station, and to claim those privileges, amongst his fellow freemen to which his descent alone entitled him; and when a taint on the pedigree, a blot on the escutcheon, entailed the actual forfeiture of station and prerogatives.†

In a certain stage of society, all beyond the limits of the *Senior's* immediate kindred lost their title to share in the joint property of the family, a principle which would

* *Lib. de Ben.* 2. *Feud. Const.*, l. 1, tit. 8, *de successione Feudorum.* (*Corp. Jur. Civ.*)

† I quote the regulations for admission to the Order of St. John of Jerusalem from Vertot's History of the Order. They will be found in "Burke's Vicissitudes of Families" under the heading "Seize Quartiers."

appear to have been partly the result of fixity of tenure, and partly of primogeniture; and out of this regulation may have arisen that division into three classes which is observable amongst so many of the earlier Germanic communities, and more particularly amongst the Welsh. The *Aeloden* with the latter people was the equivalent of the older German *Mæg*, extending *ad quartum gradum*, all beyond the limits of the *Aeloden* of a *Pencynedl* ranking as *Breyrs*, whilst all who passed out of the limits of a Breyr's *Aeloden* were reckoned as *Boneddigion*. A similar threefold division is observable amongst the Goths, the Burgundians, and the Alamanni, the *Mediocris* of this period, like the Welsh Breyr, answering, apparently, in many respects to the *Mesne-tenant*, or *Vavassor*, of a later age, though upon the Allodial principle, for there are no traces of the Imperial Benefice *a rege descendens* where this threefold division is observable. A similar principle seems to have once existed in Scotland, to judge from the regulations still in force in the twelfth century, where the Thane or Tighern, standing in the position of the earlier *Cen-cinneth*, with his sons, grandsons, uncles, and nephews, answered to the *Primus* and his *Mæg* or *Cyn*, the *Pencynedl*, and his *Aeloden*; the Ogtiern holding under the Tighern resembled the Mediocris or the Breyr, whilst the equivalent of the Boneddig was reckoned, after the charter marked the freeholder, like his type the Ceorl amongst the Villeinage.* This division of ranks is not observable amongst the Continental Saxons, and it is very doubtful whether the *Sixhynd* class amongst their island kindred was not confined to the *Wealh* holding by military service; nor does it seem traceable amongst the Bavarians, with whom the spirit of *Caste* was evidently very strong. The gradations of the *Frigiven mand*, his son, and the Bonder, mark the prevalence of the usual "three generations" amongst the Northmen, who also exhibited the latest example of the old Allodial Eorlcundman in the *Holdr*. The sixth inheritor of an Odal property ranked, indeed, as an Odal-Bonder, but it was only the sixth

* *Vide Wergilds;* and *Wootton*, l. 1, c. 4; l. 2, c. 12.

inheritor of Odal property through the maternal, as well as the paternal, kindred, who was reckoned as a Holdr "perfect in his generations," and a type of the old nobility by pure descent.* The same six degrees comprised the limits of the Norman *Mæg*, or *Cyn*, in the *Tenure par parage*—in both cases, probably, as amongst the Germans, an innovation upon the earlier *Mæg* "ad quartum gradum" —the eldest-born, or *Senior*, representing, apparently, the Jarl or Holdr of earlier times amongst his kindred, all beyond the *Mæg* or *Cyn* becoming Odal-Bonders, and holding under the later system by homage instead of fealty, like the Ogtiern under the Tighern—as *the men* instead of *the kindred*. This was the class of Odallers whose types in the English Danelage were the Land-agende men, or Odal proprietary, who by the extension of the principle of *Hlaford-socn*, or Commendation, over the Anglo-Danes, were converted into Socmen. The Northmen did not acknowledge the principles of Roman or Imperial law, and accordingly, in this part of England, instead of a Gesithcund class all holding by military service and separated, as on the Continent, by a wide barrier from the *Roturier* class, the *Ealderman*, and the *Yoong man*, the *Senior* and the *Junior*, appear as the equivalents of the Saxon Thegn and Less Thegn; whilst out of the recognition of Socage tenure, of which the principle, ignored by the Saxon, was perfectly familiar to the Norman, arose a proprietary class, somewhat resembling

* *Dahlman. Geschichte von Dännemark*, vol. 2, p. 293, *et seq.* Amongst other peculiarities lingering in the north which deserve a passing notice may be mentioned the *Brande Erbe*, or land left for the performance of funeral rites —in heathen times for burning the body—and bequeathed by the kinless, or heirless, man to the friend who pledged himself to perform the duties of an heir. An inheritance of this description was not regarded as newly acquired property, but blended with the rest of the Odal-land on a similar footing, so that none of the privileges attached to the *Holder's* land were forfeited by accepting it. The principle which recognized the transfer of privileged land for a religious purpose of this description, must have much facilitated those early bequests of land to the church in *Frank-almoigne*, which followed so closely upon the conversion of all the people of northern descent, and which may be traced to the same anxiety which the votary of Thor and Odin displayed for the care of his body, transferred in the case of the Christian convert to his soul.

the northern Bonders, Freemen and Freeholders, though not holding by military service.*

Any observations about the state of society at this early period would be incomplete without some allusion to the old law of marriage, which appears to have been once prevalent, not only amongst the populations of Germany and the North, but amongst Jews, Greeks, Romans, and Celts, and probably, therefore, was more or less universally acknowledged. In all early stages of society a sum of money, or its equivalent, seems to have been paid, not by the kindred of the wife, but by the husband or his family —a horse and arms to be handed down to her son was the dowry of the German wife in the days of Tacitus— and if the reason of this custom may be conjectured from

* Three classes are traceable in the Danelage, the King's Thegn, the Land-agende man, or land-owner, and the Cyrl, or *Fær-bena*—the "adscriptus glebæ," apparently, who could only remove by permission. In one of the Latin versions of Canute's laws these classes are described as Liberalis, Homo *allodium* habens, and Villanus or *Cherl-man*, evidently the equivalents of the Lænsman, the Odal-Bonder, and the Land-Bu, amongst the Northmen. In the Forest Laws they appear as Liberalis or Ealderman, Mediocris or Yoongman, and Minutus or Tineman. In Canute's time the Medial Thegn was unknown amongst the Anglo-Danes, the three heriot-paying classes being the King's Thegn "who has his *socn*," the greater King's Thegn "who has further relation to the king," and "he who is of less means," answering to the holders of more or less than six manors in Domesday. This is in strict accordance with the principle in force throughout the Scandinavian kingdoms, that all the Liberalis class held directly of the king; and as half the *Lah-slit*, which in the case of the Liberalis went to the king, in the case of the Land-agende man went to the *Land-rica*, or overlord, it is evident that all who were not *Tenants-in-capite*, or Ealdermen, passed into the ranks of the Yoongmen, forming that class of which the nucleus was the Odal-Bonder, an offshoot originally beyond the limits of the Holdr's kindred, converted, by the necessity of Hlaford-socn to a Land-rica, into a Socman. It is the Anglo-Danish principle, confirmed by the Norman Conquest, which is still in force, all but the Ealderman, or actual holder of the rank conferred by royal authority, passing at once into "the Commonalty"—a principle all but incomprehensible to foreigners—and from the prevalence and development of this northern principle has arisen a class unknown upon the Continent, and equally untraceable to Anglo-Saxon institutions, "the gentry" blending insensibly with both extremes of the social system. The untitled landed gentleman of ancient family bears the closest resemblance in modern times to the allodial Eorlcund-man, and his equivalent will be found, not in the Continental noble, but in the Scandinavian *Holdr* (*N. P. L.*, 48 to 54. *Const. de Forest.*, 2-4, 21. *Ed. and Guth.* 2, note A. *C. S.* 72.)

the Anglo-Saxon laws, it may have arisen from the kindred of the wife, and not those of her husband, being answerable for the penalties she might incur.* A woman in ancient times was supposed to be always in a state of tutelage, or, to use the Germanic expression, "in the *mund-borh*" of some one; and it is remarkable that the relation in which Eve stood to Adam is described in Genesis by the identical expressions which are applied to the position of Abel under his elder brother Cain—the position of a junior or subordinate member of the family. She was known amongst the Germans in her unmarried days as a "*Mægth-man*," maiden, or person under the protection of the whole *Mæg* or Cognatio; and in the age in which the German knew of no domestic attendants to undertake the "domus officia" except his wife and children, when the *Mægth-man* became a "*Wif-man*," she merely transferred her "services" to another *Hird*, and was placed in the *Mund* of another *Hus-bond*, or householder. The Israelitish woman in the Mosaic age appears to have been on a very similar footing, "going out into the service of her master," but not as a bondmaid—as a *famula*, not as an *ancilla*—not to be sold in case "she pleased not her master," but to be redeemed or repurchased at the option of her kindred; or if her master took another *famula* and neglected to provide the "unpleasing one" with food, clothing, and her ὀμιλεια—the equivalent apparently of the German *morgen-gifa* and the Welsh *Cowyll*—she might return to her kindred without redemption or repurchase. It was probably, therefore, to secure the continuance of the protection of her own kindred to the *Mægth-man*, after she had become a *Wif-man*, that her own *Mæg*, and not that of her husband, was generally responsible for her.† Hence *the dowry* long constituted

* *Tac. Germ.*, c. 18. *Edm. B.*, 7.

† *Exod.*, c. 21, v. 7 to 11. *Isaiah*, c. 4, v. 1, evidently alludes to this right to their food and clothing from their "master." "And in that day seven women shall take hold of one man, saying, *we will eat our own bread and wear our own apparel*, only let us be called by thy name." They do not offer to resign their remaining right—the ὀμιλεια—evidently because it was the test of marriage. The Israelitish dowry was fifty shekels in the Mosaic era. According to the Scholiast *ad Medeam* 236, Greek husbands in the Heroic age "bought their wives," *i.e.*, paid a dowry for them.

the test of marriage, the children of the free but undowered wife, who had a certain recognized position amongst the Greeks and Romans as the Hetaira and Concubina, being free but illegitimate. They were not "full-born," and consequently unentitled to the "right of blood," though not disqualified for "free-right"—not a little resembling, in some respects, the issue of a morgenatic marriage at the present day. At the close of the fourth century the older theory was still in force amongst the Christian population of the Roman empire, and from the words of Ambrose, "Si quis desponsata sibi et tradita utatur, conjugium vocat . . . . cum ipsum conjugium velamine sacerdotali et benedictione sanctificari oporteat," it is evident that the great archbishop considered the marriage legalized and completed by the "desponsatio et traditio," and rendered holy and christian by the "velamen et benedictio."* The progress of Christianity, however, gradually removed this principle from Roman law, and accordingly, about a century and a half later, it was laid down in the *Novellæ* that "nuptias affectus alternus facit, *dotalium non egens augmento;*" but it was far too deeply implanted in the Germanic mind to be easily uprooted, and three centuries after the reign of Justinian it was enacted in the Capitularies of the Frank kings that "non fit conjugium nisi ab his qui super ipsam feminam dominationem habere videntur . . . . uxor petatur . . . . *et legibus dotetur.*" "Traditio et dotatio" still constituted "conjugium," and in the marriage regulations laid down in the tenth century by Edmund, when Anglo-Saxon England was being assimilated in many respects to the empire, the presence of the "mass-priest" is enjoined, as of old, to sanctify rather than to legalize the union; and a marriage solemnized without the dowry would have still entailed the taint of illegitimacy upon the offspring.†

* *Ambros*, ep. 60, sec. 1; ep. 19, sec. 7.

† *Novell.*, col. 4, tit. 1, c. 3. *Capit Reg. Franc.*, l. 7, c. 463 (*Canc.*) The "traditio et dotatio" are derived in the capitulary from—*the apostles and their successors!* Amongst the "Formularies" is the following, "non est incognitum quod femina . . . . *bene ingenua* ad conjugium sociavi uxore, sed . . . . chartulam libelli dotis ad eam, sicut lex declarat, minime excessit

The necessity of purchasing and endowing a wife implied in the husband the possession both of freedom and of property, or the permission of his lord. Consequently marriage could not exist amongst the servile classes, who were looked upon as cattle or "stock," and joined or separated at the pleasure of their owners. If the Hebrew servant received a wife from his master during the period of his bondage the connection ceased when "he went out free."* Even if an *ancilla* were purchased and enfranchised—and it is extremely doubtful if she could be made free—she had neither *Mæg* nor "jus hereditatis," and as the "traditio et dotatio" could not be carried out, her children must necessarily have been illegitimate. Hence the fallacy of all those theories which describe the conquerors and conquered as at once intermingling their blood in marriage. Hence also the inability of the *Gesith* in early times to contract a marriage as long as he was an actual member of his lord's *Hird*, for he required a benefice before he could endow a wife; and Beda, in deploring the abuses of his age, enumerates amongst the evils resulting from over-lavish grants for nominal church purposes, the impossibility of finding lands for "the sons of Gesithcundmen, and of King's Thegns who had served their time," lamenting the consequences of *their inability to marry from this cause.*† The *Amas*, or *Ambact*, amongst the

facere, *unde filii mei secundum legem naturales appellantur.*" *Form.* Ap. 47, (*Canc.*) 60, (*Lind.*) There were two payments necessary to constitute a legal marriage, which appear in the Burgundian laws (tit. 14, sec. 3, 4; tit. 66 and 69) as the *Wittemon*—the *Mund-wite* apparently, or sum paid to the relatives for the *Mund* of their kinswoman—and the *Morgen-gifa*, "quod mulier ad maritum veniens erogat."

* *Exod.*, c. 21, v. 4. The wide difference between the free and the unfree, even amongst the Israelites, is nowhere more perceptible than in the punishment for a breach of the seventh commandment between a freeman and a bondwoman—widely different from the stern law where a freewoman was concerned. She "paid with her hide," and he made atonement by offering a ram, "because she was not free." No taint was cast upon "the pure blood," so the crime was comparatively trivial. (*Levit.*, c. 19, v. 20-2.) In *Digest.*, l. 23, tit. 2, c. 3, it is observed that there was no law to prevent a Freedman from marrying *his own mother!* Amongst heathens, in fact, the only law for the servile and dependant classes was their master's will. Hence, perhaps, the proverbial character of the *Libertine.*

† *Bed. Ep. ad Egb.*, sec. 11.

Gael was evidently in a similar position, for the old poem of Cenfaeladh in describing the arrival of *Gollamh*, or Milesius, in Ireland, classifies his followers under the heads of the *Lan-amain*—the *complete*, τελειος, or married, man—and the *Amas*, who, from being thus contrasted with the *complete* man, must have been evidently, like his type the *Hirdman*, *incomplete*, and incapable as an *Amas* of marriage.* The *Mercheta*, or fine paid to the lord by the tenant on the marriage of his daughter, is probably traceable to the same principle; for, as he possessed no real property, it was only by his lord's permission that he could enter into the stipulations necessary for contracting a marriage, and for this permission he paid the *mercheta*. In short, as amongst the strictly servile classes marriage was scarcely a permanent bond until after the lapse of many generations of Christianity, so amongst the dependant freemen it could only be contracted with the permission of their lord, this control of the overlord penetrating deeply into the feudal system in many other ways, which it would be needless to enumerate.

The dowry amongst the "full-born classes" was in land or inheritable property, descending to the children of the marriage, which will account for many of the difficulties in the way of mixed marriages which, in a certain state of the law, must have been all but impossible. The population of the old Roman provinces, the invaders and invaded, lived for centuries under different laws. The Roman could not hold Frank-allodial land, nor the Leud a benefice of Fiscal-land, nor the Antrustion pure Allod; and until a change in the laws of marriage, or of tenure, the barrier against alliances between these different classes must have been all but insurmountable. Under ordinary circumstances the dowry would be preserved in the family of the husband by descending to the children of the marriage; but it was the absolute property of the wife, and in default of issue by her first marriage, if she married again

* The poem is quoted in "Connellan's Dissertations on the Irish Grammar," in which *Amas* is explained to mean "in the presence of," *i.e.*, an attendant.

and had children, the property of the first husband would descend to the children of the second, and thus be lost entirely to the family of the original possessor. The wish to prevent such a contingency, to preserve the property within the original family, was the probable cause of the prevalence of those marriages with a step-mother, or with a brother's widow, which seem to have invariably scandalized the Christian missionaries on their first contact with Germanic paganism, and which a laxity of discipline had again allowed amongst the Scottish Gael at the time when Margaret endeavoured to reform the Culdee church.* Nor were such unions peculiar to the people of Germanic or Celtic race alone, for they were widely prevalent in the heathen world, whilst in Christian Egypt, marriage with a brother's widow seems to have been tolerated under circumstances which are only capable of explanation on the supposition that the property, rather than the person, of the widow was the object in view.† All such marriages —"the marriages of Egypt"—were strictly prohibited by the earlier Mosaic code, the brother's wife being amongst the forbidden connections, the relaxation of this restriction in "the second law"—in which it is laid down that "if brethren dwell together (in joint occupancy) and one of them die and leave no child, the wife of the dead shall not marry without unto a stranger, her *husband's brother* shall take her to him as a wife"—being dictated apparently by a desire of preserving the inheritance in the original line; that, as in the case of the marriages of the daughters of Zelophehad, "so shall not the inheritance of the children of Israel remove from tribe to tribe." That the dowry of the Israelitish wife was in land, or charged upon the land, and that she had a claim upon the inheritance of her husband's family, may be gathered from the history of

* *Bed. Hist. Ec.*, l. 1, c. 27. *Ep. Bonif. ad Zach. Labbe*, vol. 12, p. 314. *Vide* vol. 1, p. 149, *n**.

† *Codices*, l. 5, tit. 5, c. 8. "Licet quidem Ægyptiorum idcirco mortuorum fratrum sibi conjuges matrimonio copulaverint, quod post illorum mortem mansisse virgines dicebantur, arbitrati scilicet, cum corpore non convenerint, nuptias non videri re esse contractas." It would be difficult to assign any reason for such marriages except the desire of retaining the property of the widow in the husband's family.

Ruth, whose husband's nearest kinsman was willing "to redeem the land" from Naomi, but unable to redeem it from Ruth also—to buy out her additional claim on the property—and Boaz accordingly bought the whole property, including the "purchase" of Ruth, as a wife.*

The theory of the *Mæg*, and of descent, seems so thoroughly to have impregnated the Germanic system, that its influence is even traceable in the western church as soon as the Germanic element began to have a preponderating influence. The priest was originally estimated according to his birth, nor was it until after the connection of Charlemagne with Italy that the clerical order, unnoticed in the earlier Salic law, ranked with the nobility of the land; and when the novel system penetrated with other imperial innovations into England, it was carefully laid down that "on account of the seven orders which the Mass-priest has through God's gift, he is worthy of Thegnright."† The "seven orders" would appear to have stood in the place of the nobleman's *cognatio*, or descent, the priest being supposed to have passed through the different grades of descent in the service of Heaven, thus becoming γενεαλογητος, "perfect in his generations," and removed in the seventh degree from ordinary men. It was the same *cognatio* which, in the course of the ninth century, became the limit within which the intermarriage of relatives was prohibited, a theory totally unknown to the western church before that period. In arguing against the union of an uncle with his niece, an union not without a parallel in modern times, Ambrose remarks, that such a marriage, being "within the third degree," even the civil law pro-

* *Levit.*, c. 18, v. 16, c. 20, v. 21. *Deut.*, c. 25, v. 5. *Ruth*, c. 4, v. 4-6, 10.

† *Oaths* 12. The addition was first made to the Salic law in 803. (*Pertz. Leg.*, vol. 1, p. 113). It was an innovation upon the earlier custom of England, which is recorded in *Leg. Hen. I.*, lxviii. 3. The Roman aristocracy as a class were Pagans to the last, but the Northern nations, who always connected the highest priestly offices with pure descent, gave their best blood to the priesthood, introducing "pure blood" and ignorance into the high places of the Church. The next generation accordingly saw the Decretals of the pseudo-Isidore. Two centuries later another band of Northern converts, the Normans, were of not a little use in forwarding pretensions which they could have hardly understood.

hibited; the "Lex Divina" (or Mosaic code) extending the prohibition to "fratres patrueles," the children of brothers, who were in "the fourth degree." With a more accurate knowledge of the Jewish law, Augustine, in discussing the question of a marriage between first cousins, writes thus, "id nec divina prohibuit, et nondum prohibuerat lex humana"—alluding to the law of Theodosius, repealed subsequently in the reign of his sons; and in his answers to the questions of the newly appointed Archbishop of Canterbury, Gregory the Great grounds his objections to the marriage of first cousins, not on any Canonical prohibition, but because "experimento didicimus ex tali conjugio sobolem non posse succrescere," adding a passage which became at a later period the cause of considerable misapprehension, "unde necesse est jam *tertia vel quarta* generatio fidelium licenter sibi jungi debeat." It was to a misconstruction of this passage, probably, that Boniface of Maintz alluded in his letter to Nothelm of Canterbury, in which he said that it was maintained by some "quod in tertia generatione propinquitatis fidelibus licet matrimonia copulare;" and the nobleman who carried off and married his cousin's wife, who was also the widow of his uncle, evidently relied upon a similar misconstruction, when he asserted that such a marriage though "in the third degree," was sanctioned by the see of Rome. Pope Zacharias, in his answer to Boniface, pronounced the approval of such a marriage by any of his predecessors impossible; but he laid down no new rules, and accordingly in the early German councils all in the third degree were ordered to be separated, penance, not separation, being imposed upon married relatives within the fourth, until Charlemagne extended the prohibition to the fifth degree—the limit of the later Frank Cyn—and before long the *Cognatio* of the civil law was imposed upon the church; for the method of computation according to the canon law does not appear to have been in use before the Pontificate of Alexander the Second. It was evidently through the introduction of the Cognatio of the civil law into England that Dunstan was enabled to pronounce

Edwy and Elgiva within the forbidden degrees of relationship; and though a struggle seems to have been made against the novel regulation in the days of Ethelred (unless the explanation of *six* degrees by *four* is the insertion of a later hand), by the time of Canute all marriages within "the six degrees of *sibship*" were prohibited.*

* *Ambr. Ep. Clas.* 1, ep. 60, sec. 3. *Aug. de Civ. Dei*, l. 15, c. 16, sec. 2. *Bed. Hist. Ec.*, l. 1, c. 27. *Ep. Bonif.* 15. *Labbe* (*Mansi*), vol. 12, p. 314, 318. *Cap. Pep. ad an.* 753, sec. 1; 757, sec. 1, 2. *Cap. Carl. Mag. ad Ticen.*, sec. 20. (*Pertz. Leg.*, vol. 1, p. 22, 27, 86.) *Pithæus, Corp. Jur. Can.*, vol. 1, p. 433. *Anc. Laws* (*Thorpe*), vol. 2, p. 83, *de Incest.* sec. 2. *Confes. Ecgb.*, sec. 28. *Pœnit. Ecgb.*, sec. 29. *Eth.* vi., 12. *Cnut. E.* 7. The Penitential ascribed to Archbishop Theodore begins thus: "Qualiter apud Orientales provincias Germaniæ atque Saxoniæ . . . pœnitentiæ observatur modus;" and as the Archbishop died in 690, and any penance in those quarters must at that time have been performed to Thor and Woden, it is evident that a later hand (or hands) must have been at work on the Penitential, and the different regulations about "the forbidden degrees" may be set down as the rules of an earlier and a later code. In an age in which it was thought necessary to trace every Papal dictum to the Apostolic era, the whole question was overlaid with a mass of spurious documents, which, if correct, would exhibit the Popes of the eighth century in a light little favourable to their infallibility. In a Council, supposed to have been held at Rome, according to all the earlier authorities, during the Pontificate of Gregory the Third, but which has been placed by later authorities, by a free use of *Dele* and *Adde*, in the time of his predecessor, Gregory the Second (two somewhat mythical prelates assisting, "Sedulius episcopus Britaniæ, de genere Scottorum," and "Fergustus episcopus Scotiæ, Pictus"), the whole question is supposed to have been settled, and all dissentients duly anathematized; but in their authentic Epistles, Boniface, the two Gregories, and Zacharias, exhibit a remarkable ignorance of the provisions of this Council. The letter of the elder Gregory, however, was the greatest stumbling-block in the way of the disciplinarians of a later age. One copyist appears to have stopped short aghast at the answer about "the forbidden degrees;" another has omitted it altogether; whilst in the earlier authorities of the Canon Law it is invariably misquoted, "ut jam quarta vel quinta," being substituted for "ut jam tertia vel quarta;" in all fabricated documents the question being supposed to be raised about the *fourth*, which in authentic is raised about the *third* degree. The difficulty was at length thought to be finally set at rest by the production of a satisfactory reply from the great Pope to *Felix*, bishop of Messina, who, to calm the agitation of the Sicilian bishops, *Benedict* of Syracuse amongst the number, had written "ad nos perlatum est . . . vos scripsisse . . . ut *quarta* progenie conjuncti non separentur . . . Semper usque ad septimum gradum . . . . a sanctis antecessoribus vestris et ceteris sanctis patribus, *tam in Nicæna synodo*, quam et in aliis sanctis conciliis, servari debere reperi." (*Greg. Ep.*, l. 14, ep. 16). It happens that Gregory, in the last year of his life, wrote to the bishops of Sicily, mentioning by name, amongst others, *Donus* of Messina, and *John* of Syracuse (*Do.*, l. 13, ep.

In connection with the tie of kindred another principle is observable, the tie of *Vicinity*, which, though originally all but identical with the former, was destined in course of time to supersede it. As the German in the days of Tacitus stood side by side with his kinsmen in the shock of battle, it is scarcely probable that he was separated from his *Mæg*, or *Cyn*, in the annual distribution of the land, so that in the *pagus*, *gau*, or *scir*, the kinsman and the neighbour were probably at one time convertible terms. Such a state of society, lasting longest under a purely Allodial system and with a shifting tenure, must have been gradually modified as the system and the tenure changed; for Gesiths and Antrustions, the Franktenantry of the crown, were probably planted about the *pagus* with little reference to kindred, and the nearest neighbour would no longer represent the nearest member of the *Cyn*. In the division of the Visigothic army in the seventh century into tens, hundreds, and thousands, it is difficult to avoid recognizing the regulating principle of that confederacy before the Gothic people quitted the forests

18); but setting aside this mistake and the usual misquotation of the original letter; setting aside also the fact that these apocryphal letters first appeared in the notorious collection of Isidore Mercator; it would be a stigma upon the memory of a great and good Pope to believe him capable of admitting the assertion that the question was settled in the Council of Nicæa. Alexander the Second, in his letter to the clergy of Naples, followed the older course, misquoting, as usual, the letter of his predecessor; but a happy inspiration appears subsequently to have seized him—or to have been suggested to him—and in his letter to the bishops, clergy, and *judices* of Italy, the passage from Gregory is given correctly, and the Canonical computation founded on it, *two* degrees of the Civil law being reckoned as *one* in the Canonical, thus extending the prohibition to all the descendants of the *Tritavus*, and forbidding intermarriage between *sixth cousins!* (*Ep. Alex. II.*, 27, 38. *Mansi*, vol. 20, p. 961, 966.) Such were the latest results of this famous passage, introducing a computation unknown to Ambrose, unknown to the true Isidore of Spain, unknown to the earlier fabricators, and even to Alexander himself at one time—or why should they and he invariably misquote the letter? The system, however, which added a countless number to the 1784 relatives already included in the Cognatio of the Civil Law, was a burden too heavy even for "the dark ages," and it was accordingly relaxed in the Fourth Council of the Lateran, the fourth Canonical degree—in other words the old Cognatio of the Civil Law—being assigned as the final limit, a rule which has since remained undisturbed. (*Conc. Lat. IV.*, *act.* 50.)

of Germany;* and as the contribution of every *pagus* in the days of Tacitus was a hundred men, the continual appearance of the number *twelve* as the full complement of Compurgators, or of the *Wer-borh*, may point to an early time when it was incumbent upon every *pagus*, or *Cyn*, to furnish a quota made up of "a long ten" from every *Mæg*. Even in the time of Tacitus, however, the necessary "hundred" was generally far exceeded, and the later *pagus* probably contributed ten times the amount of the earlier; but it must always be recollected that the privileges and liabilities of the *Free* attached originally, not to the *land*, but to the *man*, who carried them with him wherever he went, these numbers being applicable solely to the people; to *Mægs* and *Cyns*, and not to any district. It was not until the close of the sixth century, that, on account of the inefficiency of the ordinary *Vigiliæ* to put down night-robbery (generally through collusion with the robbers), Chlotaire, in 595, decreed the subdivision of the *Comitatus* into *Centenæ*, or Hundreds, each canton being placed under the charge of a *Caput Trustis*, or *Centenarius*. Whenever a robbery was committed the *Caput Trustis* was bound to make good, or guarantee, the loss, and pursue the robber, all who refused to unite for this purpose—to join in the "hue and cry"—being liable to a fine of five *solidi*. If the robber was traced out of the district, the liability was passed on to the neighbouring canton, and if he was captured, the *Trust*, or Hundred, came upon the delinquent for the value of the stolen property, which had been already made good to the original loser, claiming also half the fine unless the capture had been effected without their assistance. About the same time as the Hundred was thus instituted "pro tenore pacis"—for preserving the *Frith*—Childeric, who seems to have already established it in his own dominions, repealed the law *de Chrene-cruda*, which bound the next of kin to pay the fine imposed upon a homicide, if "duodecim juratores" attested his inability to pay it himself, the new regulation forbidding the kindred to come

* *Lex. Vis.* (*Canc.*). l. 9, tit. 2.

forward in cases of wilful murder.* Thus the responsibility which had hitherto attached to the kindred was thrown upon the district—the *Voisinage*, or Neighbourhood—which still appears to have been regulated, like the earlier military system, upon the immemorial theory of the kindred, each of the lesser associations in which the neighbours chose their *Tunginus*, or *Tything-man*, answering to a *Mæg* under the elected or hereditary *Senior*.

The earliest enforcement of the principle of *Voisinage* in England may be referred to the time when Southern Britain was being gradually knit together in one monarchy by the introduction of the principles of Imperial Law. Edgar, in pursuance apparently of the policy of his father, seems to have been the first to establish the *Frith-borh* as a legal necessity; and as Edmund had already laid down the principle "that *feuds* were to be appeased by the Witan," and released the kin from "bearing the feud" in the case of homicide, it seems difficult to ignore the connection between these enactments of Edmund and Edgar, and the decree of Childeric against "the feud," and Chlotaire's institution of the Hundred "pro tenore pacis."† From

* *Decr. Child.*, 5, 9, 11, 12, 15. *Decr. Chlot.* (*Pertz. Leg.*, vol. 1, p. 11.) In the time of Chlovis, when a man was killed between two Vills, the Graphio was bound to sound his horn and collect the neighbourhood, all having to clear themselves of complicity, the *Minofledi* with fifteen compurgators, the *Meliores* with "four times sixteen." (*Do.*, p. 3; *Chlov.*, c. 9.) At this period, therefore, the responsibility was upon the *Graphio*, not the *Centenarius*. The old *Lex de Chrene-cruda* seems to have revived as the Merovingians declined in power and character—for it appears in the Salic law—until it was again set aside by the regulation that *the feud* was to be appeased by the Graphio "si aliquis *necessitate cogente* homicidium commisit"—a principle which passed into the Anglo-Saxon law in the reign of Edmund. *Hlot. et Hlud. Cap. ad an.* 829, sec. 7. (*Pertz. Leg.*, vol. 1, p. 353.) The earliest known instance in which the death of a slaughtered man was laid upon the district will be found in *Deut.*, c. 21.

† *Edm. S.* 1. *Edg. Hund. II.*, 6, 7, and *Sup.* There is not a trace of the Hundred as a civil institution, or a territorial subdivision, amongst the earlier Anglo-Saxons. In the time of Edward and Athelstan *the owner of the land* was bound to track the robber and to keep men for this purpose—like the Frank *Vigiliæ*, probably—and when the Londoners tracked stolen cattle, if the thief's *kin* were too strong, they were "to ride with the *Gerefa* within whose *Mannung* they might be," the track being always followed "*from Shire to Shire.*" On the capture of the thief, the *ceap-gild*, or value

this period it became incumbent upon every member of certain classes of society to be enrolled in a Tything and

of the stolen goods, was deducted from his property, half of the remainder set apart for his wife (if guiltless of connivance) and the rest divided between the king and "the Fellowship," *i.e.*, the London Guild; or in *Boc* and Bishop's land—in *Gesithsocns*, and Church lands, in which the royal privileges were more or less made over to subjects—the *Hlaford* shared with the Fellowship. In all this there is not the slightest allusion to the Hundred, or its duties; but after the promulgation of Edgar's law, which seems to have confirmed some enactment of his father Edmund, who alludes to the Hundred in *Conc. Cul.* 2, the track was to be followed "*from Hundred to Hundred*," and the Hundred came in for a share of the fine exactly as the Frank Canton. It received the privilege in return for the responsibility. (*Leg. Ed.* 7. *Ath. I.*, 2; *II.* 2. *Jud. Civ. Lond. I.* 8. *Cnut. S.* 20.) Every freeman who was not included in a *Frith-borh* was supposed to be "in plegio Domini," the *Hlaford* of the *Gesith-socn* being security for all his family and followers—his *Hird*. Was there any other bond of union besides the *Mæg-borh* before the institution of the Hundred? It would appear as if there had been. All *Thegn-land* was liable to the *Trinoda necessitas*, or military service and keeping up *Burhs* and Bridges. It would be contrary to the principles of the age, however, to imagine the *Burh-bote* to have been a tax levied on the land, and applied to the general construction and repair of fortresses. *Scutage* was an innovation of the first Plantagenet, and there is not a trace amongst the early Anglo-Saxons, either of the principle of commuting service for money-payments, or of that complicated system of officials which must have existed if the *Burh-bote* had been a tax of this description. In Magna Charta, constables are forbidden to levy a fine upon knights willing to perform "castle-guard" in person, or by proper substitute; and the *Burh-bote* seems in many respects to have resembled "castle-guard" under an earlier form. Every Thegn was probably bound to contribute labour towards keeping in good repair a certain *Burh*—and certain bridges—and to defend it, if necessary, in person or by proper substitute, thus being united in a bond of union with all the Thegns who, by the tenure of their land, were similarly connected with the same *Burh*. In the reign of Athelstan, before the institution of the Hundred, if a man "shunned the *Gemote*" three times, it was incumbent upon "the *yldestan* men of the *Burh*" to *ride* after him—he was scarcely within the walls—sharing the fine in return with the king; this duty, with the share of the fine, subsequently devolving upon the Hundred, after the Upland Thegns, or *Townsmen*, were collected into Tythings and Hundreds. The duty was not transferred from the Thegns *in-Burgh* to the *Upland* Thegns; the "yldestan men" were the same "Meliores pagenses" collected into a fresh association—the Hundred. The district connected with the *Burh* often extended over a wide range of country. The *Borh-wara*, or men of the *Burh* of Canterbury (which is still a *Shire* with its own *Shire-gerefa*) occupied a whole *Lathe*, the western portion of the present St. Augustine's Lathe. The *Burgh-Thegns* of London obeyed the regulations sanctioned by *the Bishops* and *the Reeves* connected with the *Burh*, and at the Conquest held all Middlesex "at farm," with rights of chace over Surrey and the Hundreds of Chiltern; still choosing *two* Sheriffs,

in a Hundred for certain purposes of civil government, thus fixing a degree of individual responsibility upon every free member of the community, each of whom was bound to have a *Borh* upon whom it was incumbent to produce him if justice so required it, and who, in case he could not be brought forward within a year, were responsible for him altogether. This *Borh* was the Tything, for the words are used as synonymous in Canute's laws, always

one for the *county* of London, the other for Middlesex. In Athelstan's reign, when more than one Bishop and one Gerefa were connected with London-*burh*, the district in connection with the *Burh* must have been wide indeed, and there was a time, probably, when London-*burh* belonged to the district, rather than the district to London-*burh*. The whole of the Anglo-Danes of Mercia were included in the Confederacy of "the Five Burghs;" four of these associations—those of Lincoln, Leicester, Nottingham, and Derby—being originally identical in extent, probably, with the modern counties. The actual *Burgh-Thegns*—the Thegns *in-Burgh*—were originally a garrison rather than a trading class, and even in later times, only the "Masters" of certain crafts were admitted amongst the Burgherhood. The taint of "Villein's" blood disqualified a man from acquiring the right of citizenship amongst the proud Londoners. After the Conquest, when the royal castle was separated from the royal Burgh, the knights of the "upland" district performed their service in the castle. (*Rect. Sing. Pers. Ath. I.*, 20. *V. Edg. Sup.*, 3 to 8. *Eth. III.* 1.) Neither *Burh-bote* nor *Bricg-bote* seem to have originally attached to the land. In a list of Frank monasteries in the Carlovingian Empire (*Pertz. Leg.*, vol. 1, p. 223) they are divided into, all liable to *dona et militiam;* to *dona sine militia;* and simply to *orationes*, the latter representing the oldest form of grant to the Church. With this species of grant alone was Beda familiar, but in inveighing against its abuse, whilst he deplores the defenceless state of the kingdom, he never laments over the decay of *Burhs* and *Bridges;* nor was it incumbent upon the Wessex freeman of the same age to repair either *Burh* or Bridge, the *Fyrdwite* being levied only for "neglecting the host," though in Canute's laws, confirmatory of Edgar's, neglect of *Burh-bote* and *Bricg-bote* was equally punished by the same fine. (*Ep. Bed. ad Ecgb.*, sec. 11. *Ini* 51. *C. S.* 66.) The earliest authentic charters make no allusion to the *Trinoda necessitas.* Æthelward of the Hwiccas in 706 freed a grant expressly from *expeditio*, "the Fyrd," without allusion to *Burh* or Bridge; and in 732 Æthelbert of Kent vaguely releases a grant from all *jus regium* except "such as Church-lands are liable to." The *Trinoda necessitas* first occurs in a charter of Æthelbert of Mercia, who, in confirming at Cloveshoo the regulations laid down by Wihtred—in 694, according to *Chron. Sax.*—declared church-land free from all secular service except "expeditio et pontis et arcis constructio;" again, at Godmundesleah, in 749, declaring the Church free from all service, "nisi sola quæ communiter fruenda sunt, omnique populo, *edicto regis*, facienda jubentur, id est, instructionibus pontium vel necessariis defensionibus arcium contra hostes," (*Cod. Dip. Sax.*, 56, 77, 87, 99). It would appear from this as if the *Burh-bote* and *Bricg-bote* had been imposed about this time *edicto regis.*

retaining this meaning in Kent; and the *Borhes-Ealdor*, or Headborough, whose representative at the present day is the Parish Constable, was the Tythingman; whilst the regulations of the Frank Canton were strictly enforced in every Hundred, the responsibility of tracking and securing the guilty party being transferred from the lord, or kin, to the neighbourhood. In England, as on the Continent, the substitution of the *Frith-borh* for the *Mæg-borh*, the *voisinage* or neighbourhood for the kindred, by rendering the Tything answerable for its members without any regard to the tie of blood-relationship—a principle which had hitherto been only recognized in the case of the man who was wholly or partially *Mægless**—must have paved the way for the gradual extinction of the clannish principle of *the kin;* and so important was this law in the eyes of Edgar, that though he left the men of *Danelage* to "choose such good laws as they willed," he desired this enactment to be "common to all the people, Angles, Danes, and Britons." The Danes indeed obeyed him—and the different names of *Wapentake* and *Hundred*, in Danish and English Mercia, would be sufficient without other evidence to place the introduction of "the neighbourhood," at the earliest, in the middle of the tenth century—but

* It is laid down in the laws of Alfred, 27, 28, that in the case of a man with only a maternal kindred, or entirely *Mægless*, his *Gegildas* were to pay or receive one-third or one-half of the Wergild, as the case might be; but I must venture to differ from Mr. Kemble when he identifies these *Gegildas* with the *Frith-borh* (*Ang. Sax.*, bk. 1, c. 9, p. 160). In this case they were rather the *Wer-borh*, and the law is not of general, but only of particular application, the Gegildas only coming forward in the case of a man partially or entirely *Mægless*. In all other cases the *Gegildas* were the kindred, or that portion of the *Mæg* liable to pay or receive a part of the fine; and in the days of Alfred's son and grandsons the *Mæg* still formed the *Werh-borh*, commended a man to a lord, took him into *borh* if accused of theft, received him if he ceased to be a *folger*, and, in short, were generally answerable for him; the unconnected *Gegildas*, or "they on whom it is incumbent," only coming forward, as in the case of the Frank claimed as a *Colonus* (*vide* p. 318, note), where there was no *Mæg*. It was only from the reign of Edgar that "the three of the *Mæg*," who, in the time of Athelstan, cleared the slain man of the charge of theft, and the "xii. plegios *cognationis suæ* qui ei stant in fidejussione," gave way to "the three of the *Frith-borh*," and the "decennalis fidejussio" alluded to in the so-called "Laws of the Confessor." (*Ed.* 6. *Ed. and Guth.* 13. *Ath. I.*, 2, 6, 8-11; *II.*, 7. *Leg. Conf.*, xx.)

beyond the Tees the enactment was never carried out, thus disclosing the weakness of the royal authority, before the Conquest, throughout the districts to the north of that river. A far better idea may be formed of the real extent of the authority of the Anglo-Saxon sovereigns, than any that can be gathered from the pages of the chroniclers of a later era, from the fact that throughout the territory of St. Cuthbert, and amongst the descendants of the old Bernician Angles beyond the Tyne, as well as in the wild moorland districts of Cumberland and Westmoreland—the identical localities which are not included in the Domesday Survey—the decrees of Edmund and Edgar on this particular point never appear to have been effectually carried out; and the territorial subdivision of the Hundred is still unknown throughout the four northernmost counties of England, as well as amongst the once kindred Angles of the Lothians. In northern England and in southern Scotland, wherever indeed an Ealdorman who may have traced his lineage to Ida long ruled *hereditarily*, though by the confirmation of the English king, the *Ward* or the *Quarter* are still the sole known subdivisions of the county, answering, not to the Frank and Anglo-Saxon Hundred, but to the *Fiordung* or *Fardingdela*—the *Quarter* of the Scandinavian *Hærrad*, or older Hundred, and of the Frison *Liod-thing*, the type of the Kentish *Lathe*.*

Under the name of *Visnet* the principle of the *Voisinage* penetrated, with other innovations, into Scotland, where its application rather than its existence was a novelty; but there is not a trace of the territorial subdivision of the Hundred, nor of the substitution of the *Frithborh* for the kin or lord. It was the *Sequela trium Baroniarum* "which might hang the man accused of theft

* The *Wards* into which the Northern Counties are divided must not be confounded with the Hundreds of the south. As Kent and Sussex are "kingdoms" *mediatized* and converted into counties, the *Lathes* and *Rapes* representing the old subdivisions of each kingdom *containing Shires*, so the *Lands* in the north were once districts equally *containing Shires*—Norham*shire*, Island*shire*, Hallam*shire*, and Bamborough*shire*, for instance—and the *Ward* is a subdivision answering to the *Lathe* and *Rape*, or *Shire*, rather than to the Hundred or Wapentake.

who could not produce his *plegius*, or surety;" and it was the Steward, or Bailiff, with "four true men of the Vill" who formed the "proportio patriæ trium Baroniarum," who were directed in certain cases "to make diligent and faithful inquest of the loyal men of the *Visnet*." It was "the Lord of the fee," or his Bailiff, who settled the day of the inquiry with the Sheriff, or in royal demesnes and thanages the Sheriff alone, without the least allusion to Hundred's Ealdor or Headborough; though "the Steward and four true men of the Vill" were undoubtedly the equivalents of the Tythingman and the "proportion" of the *Frith-borh*.* In short, it was the Norman Voisinage and not the Saxon Neighbourhood that was introduced into Scotland. The *Barony* and the *Vill*, or *Town*, were the regular subdivisions of the county, the name of Thanage, after the introduction of military service, being confined apparently to the actual property of the Thane, held in fee-farm, and by Scottish service, though its Gaelic equivalent may have been attached in earlier times to the whole district subsequently known as a Barony. The very same names were applied by the Anglo-Normans in Ireland to the Gaelic subdivisions of the *Triocha-Cead* and *Baille-Biatagh;* and as the Gaelic *Davoch* was the measurement by which all "holdings" appear to have been estimated at a later period, it is probable that in Scotland also the Barony and the Vill simply represented the ancient subdivisions of the country. The changes which were brought about in England by the substitution of the *Frith-borh* for the earlier tie of kindred, are not so observable beyond the Tweed; *Manred*, in many respects the equivalent of the Anglo-Saxon *Hlaford-Socn*, long continued to be the usual bond of union between the greater and lesser barons; and the feeling that attached the kinsman to the head of his race, or the feudal retainer to his hereditary lord, was still traceable in Scotland at a comparatively recent epoch, in the Lowlands as well as in the Highlands, though naturally most developed amidst the mountains of the north and west, and amongst the Border clans of the southern frontier.

* *Assize Will.* 21. *Stat. Alex. II.* 5.

Appendix G.

COINAGE.

ROMAN WEIGHT.

2½ Wheat-corns = 1 Obolus.
5 ,, = 2 ,, = 1 Scrupulum.
0 ,, = 4 ,, = 2 ,, = 1 Semisextula.
0 ,, = 8 ,, = 4 ,, = 2 ,, = 1 Sextula.
0 ,, =12 ,, = 6 ,, = 3 ,, = 1½ ,, = 1 Sicilicus.
0 ,, =24 ,, =12 ,, = 6 ,, = 3 ,, = 2 ,, = 1 Semuncia.
0 ,, =48 ,, =24 ,, =12 ,, = 6 ,, = 4 ,, = 2 ,, =1 Uncia.

Roman denarius = 3 Scrupula of 17.534 *gr.* Troy.
Roman pound = 5050 *gr.* Troy, 5386⅔ Tower, 7182⅔ Wheat corns.

It is scarcely necessary to add that I do not mean to assert that the Romans used the Wheat corn as the basis of their calculation. I have simply reduced the different weights the same standard to point out their similarity.

OLD SCANDINAVIAN WEIGHT.

2 Wheat-corns= 1 Pening.
4 ,, = 2 ,, = 1 Silfer.
6 ,, = 8 ,, = 4 ,, = 1 Ortuga of Penings.
2 ,, =16 ,, = 8 ,, = 2 ,, = 1 Ort. of Silfers.
8 ,, =24 ,, =12 ,, = 3 ,, = 1 Ore of Penings.
6 ,, =48 ,, =24 ,, = 6 ,, = 3 ,, = 2 ,, = 1 Ore of Silfers.

24 Ortugas = 8 Ores = 1 Mark.
Norwegian Ore =412.58 *gr.* Troy, or 586.78 Wheat corns.
,, Silfer= 17.19 ,, ,, 24.45 ,,

COLOGNE MARK.

10 Wheat-corns= 8⅓ Eschen = 1 Heller.
20 ,, = 17 ,, = 2 ,, = 1 Pfennig.
80 ,, = 68 ,, = 8 ,, = 4 ,, = 1 Quent.
20 ,, = 272 ,, = 32 ,, = 16 ,, = 4 ,, = 1 Loth.
40 ,, = 544 ,, = 64 ,, = 32 ,, = 8 ,, = 2 ,, =1 Ounce.
20 ,, =4352 ,, =512 ,, =256 ,, =64 ,, =16 ,, =8 ,, =1 Mark

Cologne ounce = 451 *gr.* Troy.
Copenhagen ounce = 454 *gr.* Troy.
(Old Cologne ounce = 512 Eschen = 602 Wheat corns.)

TOWER WEIGHT.

4	Wheat-corns	=	3	Grains.										
32	,,	=	24	,,	=	1	Dwt. sterling.							
512	,,	=	384	,,	=	16	,,	=	1	Ore of 16.				
640	,,	=	480	,,	=	20	,,	=		=	1	Ore of 20.		
5120	,,	=	3840	,,	=	160	,,	=	10	,,	=	8	,,	= 1 Mark.
7680	,,	=	5760	,,	=	240	,,	=	15	,,	=	12	,,	= 1½ ,, = 1 Pound.

Tower weight : Troy weight :: 15 : 16.
Tower ounce = 450 *gr.* Troy.

PARIS TROY WEIGHT.

24	Grains	=	1	Denier.						
120	,,	=	5	,,	=	1	Gros.			
960	,,	=	40	,,	=	8	,,	=	1	Ounce (mancus).
7680	,,	=	320	,,	=	64	,,	=	8	,, = 1 Mark.

French Troy ounce = 472½ *gr.* Troy.
Dutch Troy ounce (= 20 Engel = 640 Aas) = 474¾ *gr.* Troy.

OLD BAVARIAN POUND.

32	Wheat-corns	=	1	Denarius.						
480	,,	=	15	,,	=	1	Semisolidus (semuncia).			
960	,,	=	30	,,	=	2	,,	=	1	Solidus (mancus).
7680	,,	=	240	,,	=	16	,,	=	8	,, = 1 Pound.

OLD SCOTTISH POUND.

32	Wheat-corns	=	1	Dwt. sterling.						
384	,,	=	12	,,	=	1	Solidus.			
640	,,	=	20	,,	=	1⅔	,,	=	1	Ounce.
9600	,,	=	300	,,	=	25	,,	=	15	,, = 1 Pound.

MONEY VALUES

IN MEROVINGIAN DENARII, OR SCRUPLES OF 24 WHEAT-CORNS.

An Obolus
A Pening
A Sceat
} = 12 Wheat corns of silver.

An Irish Sgreabal
A Welsh Ceiniawg gota (?)
A Scandinavian Silfer
} . . . . . = 1 Denarius.

A Thrymsa or Ortuga of Penings . . . . . = 4 ,,
A Frank Gros . . . . . = 5 ,,
A Saxon or English Solidus of 2 Thrymsas . . = 8 ,,
A Kentish Scilling . . . . . = 10 ,,
An Ore of Penings . . . . . = 12 ,,
An Ore of Silfers . . . . . = 24 ,,
A Salic or Merovingian Solidus or Mancus . . = 40 ,,

IN CARLOVINGIAN OR STERLING DENARII OF 32 WHEAT-CORNS.

A Saiga (coin) A Welsh Ceiniawg gyfreith (?)	=	1 Denarius.
An Anglo-Danish Thrymsa A Saiga (weight) A Frison Solidus	=	3 ,,
An English or Mercian Scilling A Frank Trimessis	=	4 ,,
A Wessex Scilling	=	5 ,,
A Carlovingian Solidus An Anglo-Norman Shilling	=	12 ,,
An old Scottish Ore	=	16 ,,
A Mancus	=	30 ,,
A Pound	=	240 ,,

The Obolus, Maille, and Halfling were the half; the Feorthling, the quarter of the *Nummus* or silver penny.

The word once current throughout the north for a fine was *Baug*—a ring or bracelet—pointing to a time when the fine was paid, if in metal, in ornaments, and not in coins; and when rings are described as money, it is probable that they passed as *pecunia* and not *moneta*, according to their weight, or intrinsic, rather than their arbitrary value. An ornamented weapon was not a "legal tender," according to some codes, for its value was arbitrary, and it may be inferred that there was a time when everything was literally tested by weight or measure. Amongst the same Scandinavians also lingered the oldest Teutonic names for weight—the *Lod* and the *Ore*—words still significant amongst our own mining population, though in no way implying the divisions of a heavier weight, but simply conveying the idea of a mass of pure metal, much as was once the case with the Roman *as* and *pondus*. There is no purely Teutonic word for a pound, the mark being only the *pondus marcatum*, or *marked* weight, a description applicable to any weight before it was restricted to one. Hence it is probable that the *lod* and the *ore*—the *semuncia* and the ounce—were the original standards of calculation rather than the pound; and as soon as they assumed a settled character, as soon as a regulated system of weight was established, *Roman* names appear—the *as*, the *sicilicus*, the *denarius*—in other words, when the

Teutons began to regulate their weights they naturally assimilated them to the civilized standard with which the majority must have been more or less familiar.

Money weight and common weight were originally identical, the wheat-corn in most cases supplying the basis of the calculation. Amongst the earliest coins, if not the earliest, was the *Obolus*, sometimes known apparently as the *Saiga*, estimated, if of silver, at 12 wheat-corns. The Anglo-Danish *Thrymsa*, or *Trimessis*, which appears in the Wergilds of the "Northern leod," was a weight equalling three sterling pence, or 96 wheat-corns. The *Trimessis*, which was always the third part of an *ore* or *solidus*, was known amongst the Scandinavians as the *Ortuga*, or piece of eight *penings*, each of which must therefore have weighed 12 wheat-corns. The old Scandinavian *pening*, then, was the *obolus* of silver estimated at 12 wheat-corns—or its equivalent in copper or mixed metal—8 making an *Ortuga*, and 24 an *Ore of penings*, known in the north as the *Sak-ore*, a lighter, and probably an older *ore* in which all fines were paid. The ordinary weight was the *ore of silfers*, each *silfer* being the Roman *scruple*, reckoned at 24 wheat-corns, the ore and mark of *silfers* doubling the ore and mark of *penings*. In short, the *ore of silfers* was simply the Roman ounce estimated in wheat-corns, the *ore of penings*, or *lod*, answering to the *semuncia* or half-ounce; hence the prevalence in the northern codes of half-marks and half-ores—half-pounds and half-ounces—as the fine was reckoned by the *Sak-ore*, or ore of penings, and paid in later times, if in money, in *silfers*, when the *obolus*, or older *pening*, had become the *half-penny*.*

* "Obolus . . . . fiebat olim ex ære ad instar sagittæ, unde et nomen a Græcis accepit; hoc est sagitta." (*Isid. Orig.* l. 16, c. 24). The German *Saiga* was probably a corruption of the Latin *sagitta*. In Suabia and Bavaria the Saiga appears to have been the name of the *nummus*, or current coin; and in later times, probably after the use of the name of *denarius* and its equivalents for the *nummus*, it seems to have been applied to a weight of three pence, or amongst the Bavarians, of five. The earlier *nummi* were probably of copper or mixed metal, like the Northumbrian *Styca;* nor is it unlikely that the older *sceat*, or *division*, was, as its name implies, the *silfer* or scruple of silver literally broken in half. The later denarius was in this manner divided

The Scruple was evidently also the *Merovingian*, or old Salic *denarius*—indeed in most money weights it ap-

into *Halflings* and *Feorthlings*. The Scandinavians had also an Ore of *Wadmal*, a sort of coarse cloth, which seems to have been at one time in use amongst the Anglo-Saxons, for a *gafol*-blanket in the days of Ini was a legal tender for sixpence. From the expression *Mærra* pence—of pure silver—in the laws of Alfred a coinage of mixed metal was evidently not unknown at that time; and as the same fine occurs in the laws of Ethelred and Canute without the addition of the word *Mærra*, it may be inferred that it was then obsolete. From the frequent injunctions in the laws that there should be only one coinage and one weight, it is evident that the older coinage and weights must have gradually disappeared, or become very scarce. (*Alf.* 3. *Eth.* 7, 11. *Cnut. Sec.*, 3, 59. Compare *Heimsk.*, vol. 3, p. 341, 429, notes.) If the *half-esch*—or *as*—is taken from the Cologne *Heller*, the Ounce is *exactly* the Roman *Uncia*, the *Loth* the *Semuncia*, and the *Quent* the *Denarius*. This part of the Cologne weight would appear to have been based upon Roman *weight;* the other part, the *Heller* and *Pfennig*, weighing originally eight and sixteen *asses*, upon Roman *coinage*. The addition of thirty-two *Eschen* to the ounce was made to raise it to the Carlovingian standard. Since writing the above I have had the advantage of reading Mr. Dasent's very able dissertation on the northern money in his Appendix to the "Story of Burnt Njal," (vol. 2, p. 397). As he gives the weight of the Norwegian Ore, on the authority of the *Numismatic Chronicle* for 1857, as 412.58 grains Troy, it is evident that the *Silfer*, its twenty-fourth part, weighing 17.19 *gr.* Troy, or 24⅓ wheat-corns, was identical with the older Merovingian denarius or scruple. According to the Gragas, when silver was first coined in Iceland, it was "so coined that xx. (according to the amended reading) pennies made an ounce weighed . . . . a hundred in silver was then reckoned the same as four hundreds and twenty ells of Wadmal, and the ounce of silver was worth half a mark Wadmal." These xx. were probably "long-tens," *i.e.*, xxiv.—for the invariable subdivision of the Northmen, the *ortuga* or piece of eight, *Thrymsa* or *Trimessis*, could not have been used in an "ore of twenty"—and thus the original subdivision of the ore in the north was into 24 scruples; whilst from *four* times the value of the ore of Wadmal, it gradually rose to *six*. The *Sak Ore*, ore of penings, or of mixed metal, gradually became so deteriorated that the old "Law silver of x. pence to the ore"—the *Semuncia* of 12 Silfers or 24 Penings—was in the thirteenth century current at 60 ores to the mark of pure silver or ounce of gold. The *Silfer*, however, appears to have equally suffered, for *blue* or *grey* silver was only current at the rate of 30 ores to the ounce of gold, so that *blue* silver was just double *law* silver—the adulterated ore of silfers doubled, as of old, the adulterated ore of pennings, or Sak ore. Mr. Dasent remarks in a note that Canute "first gave systematically bad weight," his pennies seldom averaging more than 16 *gr.* Troy, and sometimes falling as low as 13 *gr.*, but all of *pure silver*. I suspect, however, that instead of adulterating the Anglo-Saxon coinage, Canute introduced the Scandinavian—the *Nordling* in place of the *Esterling* pence. The penny of 16 *gr.* Troy, allowing for loss of weight, closely approaches the scruple of 24 wheat-corns, 18 *gr.* Tower, or 16.875 *gr.* Troy. The *Gulathing* mentions an ore of 30 pence, and if the Norwegian

pears to have usurped the place of the *denarius, drachma*, or *penny weight*—40 going to the ounce or *solidus*. *Solidus* was the later Roman name for the *aureus nummus*, or gold coin of the value of 25 Roman denarii, or, originally, 75 scruples of silver; and when first coined, at a time when gold was ten times the value of silver, it must have contained $7\frac{1}{2}$ scruples of gold ($7\frac{1}{2} : 75 :: 1 : 10$); but after Constantine coined 72 *solidi* out of the pound of gold, each weighing a *sextula*, or 4 scruples, wherever gold and silver were estimated at the ratio of 10 to 1, each *solidus* of 4 scruples of gold must have been worth 40 scruples of silver.* Hence perhaps the origin of the old Salic *solidus* of 40 Merovingian denarii, or Roman scruples, which passed into their system of weight as the ounce; for the solidus of this period was a weight, an *ore* or ounce, not a coin; though it may have originally represented

ore is divided by 30, the result is a penny of 13.75 *gr.* Troy. This penny was probably adulterated metal, but Canute "king of England, Denmark, and Norway," would appear to have introduced into England—or perhaps into the Danelage—a coinage of *pure silver*, answering to the scruple, probably, of Denmark, and the Norwegian penny as established by the Gulathing. In one point I am obliged to differ from Mr. Dasent, where he says that "a hundred in silver" was equal to two and a half marks or twenty ounces. A hundred what? A numeral of this description always supposes the addition of *ores, marks, silfers*, or a coin or weight of some description. "A hundred in silver," according to Northern calculation, seems invariably to mean "a hundred ores of silfers."

* When 40 *aurei* were coined out of the pound of gold, each weighing $7\frac{1}{5}$ scruples, and equal to 72 scruples of silver, 100 denarii must have been coined out of the pound of silver. When 45 aurei, and the same quantity of denarii, were coined out of the pound of gold and silver respectively, gold must have increased in value to 11.25 ($6\frac{2}{3} : 72 :: 1 : 11.25$). If Constantine, when he coined 72 *solidi* out of a pound of gold, kept the denarius at its original weight, gold must have increased to 18. But this seems scarcely probable, and it is more likely that he reduced the weight of the denarius. By *Cod. Theod.* the value of a pound of silver was fixed at 5 *solidi*, or gold : silver :: 1 : 14.4. The early Franks, however, were hardly guided by any very accurate principle in their valuation of the two metals. The usual proportion amongst the Northmen seems to have been 8 to 1; whilst according to Ruding it was 9 to 1 in England in the days of Henry I.; and it is not improbable that the Franks may have reckoned it at 10 to 1. After the silver used in coinage was adulterated, gold appears to have been adopted as a more fixed and settled standard—for there were no new gold coins to the northward of the Alps—and fines were occasionally reckoned "in gold," *i. e.*, at the current value of gold, much as it is said at the present time "in sterling money."

amongst the Franks the weight in silver answering to the value of the Roman gold coin.

The Obolus and the Scruple appear to have been equally familiar to the Anglo-Saxons under the names of the older *sceat* and *penny*. The Kentishmen seem to have resembled the Franks in their coinage as well as in their Wergilds, for their *scilling* weighed 20 *sceats*; and as the *scilling* was only a corruption of the Roman *sicilicus* (the *shekel*), or quarter-ounce weight, the Kentish ounce must have contained 80 *sceats* or 40 pence; in other words it was the old Salic *solidus* of 40 scruples, often met with in later times under the name of the *mancus*, or heavier ounce of 30 Carlovingian (or *sterling*), and 40 Merovingian pence, or scruples.*

The Anglo-Saxons, however, appear to have brought with them a system of their own, differing from that of the Jutes, or rather perhaps of the Franks. As the Scan-

* The word *Sceat* is used somewhat arbitrarily in connection with the Anglo-Saxon coinage. Only two descriptions of Sceats are traceable in the laws, the Kentish and the Mercian, which could scarcely have been identical. The simple wergild of a king by Mercian law amounted to 30,000 Sceattas or 120 pounds, and hence it has been supposed that a pound of 240 pence contained 250 Sceattas. But the inference, though at first sight natural, is scarcely correct; and it would have been impossible to calculate in such a coin in *ores* and *scillings*, the true Anglo-Danish and Anglo-Saxon mediums of calculation. From the *Leg. Conf.*, 27, 33. *Wil. Conq.* I. 2, and *Domesday*, it may be gathered that 100 ores (or 2000 pence) were reckoned as 8 pounds by Anglo-Norman computation; whilst in *Leg. Hen. I.*, lxxvi. 4, 200 Wessex scillings (or 1000 pence) were equivalent to 4 pounds. According to this method of reckoning, which was evidently the Anglo-Norman, 120 pounds would have contained 30,000 pence—thus calculated, probably, "to make it even money"—and I see no reason to doubt that *Sceat* amongst the Anglo-Saxon was simply the true and earlier name for the *nummus*, *bit*, or current coin for the time being, whether obolus, scruple, or sterling penny, like the *Saiga* in eastern Germany. The average weight of the coin to which, for some unexplained reason, the name of *Sceat* has been applied, is about 17 *gr.* Troy (*Hawkin's Silver Coinage*, p. 18), or 24 wheat-corns, the weight of the scruple, or Merovingian denarius. The Kentish sceat was a totally different coin, 640 being contained in a pound, if the Kentish pound is reckoned at the very lowest, as a pound of 8 ounces. Ruding (vol. 1, p. 296) mentions a few coins weighing about 7½ *gr.* Troy—too heavy for Feorthlings, too light for Halflings—which, allowing for loss of weight, would answer very well with the obolus, which ought to have weighed correctly 8.425 *gr.* Troy. These may have been Kentish sceattas, or rather older sceats, such as those mentioned in the Kentish laws.

dinavians had their "Ore of Silfers" and "Ore of Penings," so the Continental Saxons originally used a lighter, and probably an older, ore for their Wergilds, containing only two *Trimesses;* and as the Scandinavian ore of 3 *ortugas* contained 24 oboli or scruples, so the lighter Saxon ore of two "*Thrymsas*" must have numbered only 16. In their measures as well as in some of their other customs the *Bordrini* or Saxon *Ripuarians*—the Westphalians—differed from their confederates in the north, the men of Engern and Ostphalia, the latter using a lighter measure; and the lighter ore seems to have been brought by these "Northern Saxons" into England, becoming the older "English" standard as the *solidus* of 16 *nummi*, or "Ore of sixteen." The fine exacted by Ceadwalla of Wessex for the death of his kinsman at the hands of the Kentishmen, is described in the older MSS. of the Saxon Chronicle both as "thirty thousands" and "thirty men," Æthelward reckoning it at "30,000 *solidi*, each containing 16 *nummi*," or "Ores of sixteen." Each "*manwyrth*," then, must have been reckoned at "1000 ores of 16;" and if the *numinus* was the older *sceat* or *obolus* of 12 wheat-corns—or its equivalent in base metal—1000 *solidi* of 16 *oboli* would be exactly identical with 2000 *Thrymsas* (or 1000 ores of 16), the Wergild of a Thegn amongst the Northern Leod—for the Saxon lighter solidus, in which all Wergilds were computed, contained two *Thrymsas*—as well as with 1200 Wessex *scillings*, the Wergild of a Twelfhyndman. This double coincidence can scarcely be accidental, and it would appear as if the earlier system of the Anglo-Saxons resembled that of their Continental kindred, and that they were once familiar with the *obolus*, whether pure or of mixed metal, the *scruple*, and the *solidus* of two *thrymsas* or "ore of sixteen," of which the quarter was the old English *scilling* of 4 pence, which so long retained its ground as the *Groat*.*

Nor was the Scruple confined to the Germans and the Northmen, for the silver coin among the Irish was long

* *Leg. Sax.*, tit. 18 (*Lind.*), 19, *Cap. Sax. ad an.* 797, c. 11 (*Canc.*) (*Canc.*) *Capit. Carl. Mag.* 1, ix. *Chron. Sax.* and *Æth.* 694.

known as the *Sgreabal*, weighing 24 wheat-corns, and equal in value to 3 older Irish pennies, probably of mixed metal or copper; whilst in Wales there were two descriptions of pence, the *ceiniawg-gyfreith*, legal penny or *argant*, of which 240 went to the *punt*, apparently the sterling penny of 32 wheat-corns; and the *ceiniawg gota*, or short penny, apparently the scruple; for the legal is said to have been a third more than the short penny, and the addition of a third, or 8 wheat-corns, raises the weight of the scruple to that of the sterling penny. The Welsh *Dimai*, or half-penny, would in this case answer to the *obolus* or older *sceat*.*

An important change was brought about in the reign of Charlemagne, when a pound of 12 ounces, or "ores of twenty," was adopted or confirmed as a money weight, and subdivided into 20 *solidi*, each containing 12 *denarii* of the weight of 32 wheat-corns. It was in 781 that Charlemagne, both at Frankfort and in Lombardy, ordered that the new pence "which bear our name, and are of full weight," should pass everywhere after the 1st of August, all fines and compositions henceforth being paid in the new money, except where the Saxons and the Frisons were concerned, when the older Salic solidus was still to be used.† The Carlovingian pound was introduced into England, continuing to be the *sterling* standard, under the name of "Tower weight," until the reign of Henry the Eighth, eventually also becoming a standard throughout Germany and in Denmark, the ounces of the Cologne and Copenhagen *Marks* varying only 1 and 3 grains respectively from the Tower ounce. The introduction of the sterling

* "*Tribes and Customs of Hy Many*," p. 80, note H. *Wootton, Gloss. in voc. Ceiniawg Gota.* It is not certain, however, that the Welsh pence were the scruple and sterling penny, for 6 of the lesser are elsewhere said to have equalled 4 of the larger. If the larger penny was the scruple, the *Dimai* was the same as the older Irish penny, 3 of which were of the same value as the scruple.

† *Cap. Mant.* 9. *Cap. Francf.* 5, 11. (*Pertz. Leg.*, vol. 1, p. 41, 72.) Pepin had previously ordered, "ut amplius non habent in libra pensante nisi 22 solidi" (*do.*, p. 31), so that a change may have been in progress before. The *solidi* mentioned in *Pertz*, p. 191, were of gold; *sextulæ*, of which 72 went to the pound. They were current in Italy.

penny amongst the Anglo-Saxons did not supersede their older method of reckoning, and up to the date of the Norman Conquest they still used an "ore of sixteen," a *scilling* of fourpence, and consequently a pound of 15 ounces, as may be seen in the Regulations of the port of London during the reign of Ethelred.* In Wessex, however, the Frank "ore of twenty" was current, and consequently a *scilling* of five pence and a pound of 12 ounces;† and after the introduction of the Frank solidus, or *shilling* of twelve pence, by the Normans, the recollection of the older *scillings* was perpetuated in the groats of four and five pence. Perhaps the oldest Anglo-Saxon coinage, probably equivalent to the "Ore of Penings," was that which lingered longest in Northumbria, the *Styca* ‡—*stück*

* *Leg. Ethel. Inst. Lond.* xi. "Ut omne pondus sit marcatum ad pondus quo pecunia mea recipitur, et eorum singulum signatum ita quod xv. ore libram faciunt." The *pondus marcatum* does not appear to have varied, whether it was divided into 8 *mancusses*, 12 "ores of 20," or 15 "ores of 16." From a passage in a charter of Æthelbert of *Wessex*, dated 863, "duarum dierum refectio vel xxx. argenteis, hoc est semicum libra," it may also be gathered that the true English pound contained 60 *scillings* of 4 pence, or 15 "ores of 16." The same sum in another charter is called "triginta *scilos*" (*Cod. Dip. etc.*, 288, 165). The difference between the ore of 16 and the ore of 20 was not confined to England, for it is equally traceable on the Continent. The *Loth* or *Semuncia* of the Cologne mark contained 4 *Quents* of 4 *Pfennings*, or, in other words, was an ore of 16, and the *Quent* a *scilling* of 4 pence; whilst the Frank *Gros*, which was evidently the fourth part of a *Semuncia*, was a *scilling* of 5 pence belonging to an ore of 20. They both belonged to the older ounce, the *Loth*, *Semuncia*, or ore of Penings, which, indeed, seems universally to have been the oldest standard of weight. The pound of 15 ounces, perhaps the old "merchant's pound," was, probably, displaced as a "pondus averiorum" by the Italian measure introduced by the Lombards; for the modern "pondus averiorum or "avoirdupois" varies only a few grains from the Roman commercial pound. As the Northmen always appear to have retained the use of the older penny or scruple, whilst the *Eastmen*, or Ripuarian and Austrasian Franks, had long adopted the heavier penny (*Leg. Rip.* tit. xxxvi. 22), it was perhaps from this cause that the latter gradually acquired the name of the *Esterling*, or sterling penny.

† The *scilling* of 5 pence would appear to have been current in Wessex in Alfred's reign, but hardly in Ini's. Compare *Ini* 59. *Alf.* 47, 71, and *note*.

‡ *Styca* is another instance of a name somewhat arbitrarily attached to a coin. It seems only to be met with in the Saxon version of "two *Lepta* which make a *Kodrans*"—"two *Stycæ* that is a *Feorthling*;" and there is no proof that it belonged exclusively to the coin to which it is applied. The *Styca* of Ecgfrith weighs about 19 *gr.* Troy

or bit—of base metal, remaining in use down to the era of the Danish settlement, when it appears to have been superseded for a time in the Danelage by a Scandinavian coinage, though the sterling penny and the ore of sixteen eventually replaced the scruple and the *thrymsa* or *ortuga;* for at the date of the Conquest the Anglo-Danish "Hundred" was reckoned at 8 *lbs.* or 1920 sterling pence, which exactly tallies with "a long hundred" or 120 "ores of sixteen." The innovations of the Danes, however, seem to have been confined to the Danelage, and not to have penetrated beyond the Tees or Tyne, for the valuations in the "Leges inter Scottos et Brettos," which bear evident traces of Anglian influences, are calculated according to the true Anglian method in "ores of sixteen."*

As long as money continued to be measured by weight, as long as a "mark of sterlings" represented a "pondus marcatum" in one scale, and silver bits heaped in the other, until the balance was equal, the officials of the royal and other mints could alone profit by adulterating the coin, and ruthless were the mutilations denounced against fraudulent *monetarii;* but as soon as the value of the *nummus* became arbitrary, and the profit of such transactions was transferred to higher quarters, the practice of adulteration became widely prevalent, without any wholesome fear of the attendant penalties. The time

(*Hawkins*, p. 37), and if this coin averaged a scruple in weight it would have exactly answered to the Scandinavian *pening* of base metal, equalling a *silfer* in weight but of only half its value.

* It may be gathered from "the Assize of King David," c. 31, that there were other weights current in Scotland when the Caithness pound was established as the standard. In the "Statutes of the Guild" a pound containing 15 ounces of 20, and 25 solidi of 12 pence sterling, is attributed to the same king, but in a certain sense only traditionally, for allusion is made to a standard from which the penny had deteriorated, this standard being ascribed to David (*Act. Parl. Scot.*, vol. i., p. 5, 309). It is certain that the "ore of 16" in which the fines in the Leges inter Scottos et Brettos are reckoned, does not agree with the pound in the statutes of the Guild. As the sum of xvi. *den.* occurs in the laws of William, and as in his regulations about his *Can* from Galloway, *the Cow* was valued at iiii. *solidos*, or 48 pence, the identical calculation in the other laws, it seems probable that the "ore of 16" was still a current method of reckoning in Scotland at the close of the twelfth century, though fast giving way to the shilling of 12 pence. *AS. Will.* 33.

when money ceased to be weighed might almost be calculated with tolerable accuracy, by observing the date at which it began to be *legally* adulterated.

Wherever there is hope of gain, human nature, though often short-sighted, is generally ingenious, and as it was apparently to the advantage of the ruling powers to debase the coinage, so it became profitable to a still wider class to raise the standard of weight. Amongst the most profitable prerogatives of royalty was the right of levying toll, and as this right of toll, or *droit d'octroy*, was often delegated to subjects, and the toll, or *octroy*, was levied in kind, a numerous body of magnates and burgesses were equally interested with the king in raising the weight of the *Livre d'octroy*, or pound in which such toll was taken. This seems to have been effected by re-dividing the pound of *sixteen* ounces into *fifteen*, and adding an additional ounce, and a new pound was thus established numbering sixteen somewhat heavier ounces; so that every merchant as he passed the *Barriere d'octroy* must have been ingeniously mulcted of some additional toll upon all that he bought or sold by the common weight. As time passed away, and toll, no longer levied in kind, was paid in money, the reason for this change, ceasing to be obvious, was gradually forgotten; but such appears to have been the origin of the heavier *livre d'octroy*, which passing into England, though only as a money weight of twelve pounds, has long been recognised as the standard, under the familiar appellation of "the *Pound Troy*."*

* In many parts of Germany, Switzerland, and elsewhere, there used to be a *heavy* and a *light* pound, the latter being simply the Cologne Mark doubled, the former, probably, the *Toll* pound. The Royal Commissioners for settling the standard of weight, discarding the old idea that the Troy pound derived its name from Troyes in Champagne, deduce it from Geoffrey of Monmouth's name for London, *Troynovant!* But they do not explain how Troynovant became connected with the weights of France and Holland, nor why Dutch *Troys* and French *Troys* were familiar weights in Scotland, whilst *London Troys* never existed.

APPENDIX H.

EARLY IRELAND.

IRISH history is not unlike a Palimpsest before the experience of some practised scholar has detected, beneath the worthless handiwork of the mediæval copyist, the original writing on the manuscript. Truth lies below, hidden under the—but too often—worse than worthless handiwork of many a fabulist. Veritable legend has been distorted, palpable fiction has been largely invented, and the whole has been carefully compacted and neatly rounded off into a parody upon authentic history, gravely synchronized by the learned with real events of the past. The present race of Irish scholars, however, differing widely from the past, bids fair to remove ere long the accumulations which still continue to obscure the *Palimpsest* of their country's early history; and by the light derived from their labours it is possible even now to disinter some of the real facts from beneath the mass of rubbish, heaped over them in each succeeding generation by the credulous or the designing.

From the dawn of authentic history until the opening of the eleventh century, for five hundred years and upwards, one race alone gave monarchs to Ireland, no provincial king aspiring to contest their supremacy, however he may have refused to acknowledge their superiority. The inroads of the Northmen first broke the power of the Hy Nial, and during the century and a half intervening between their settlement and the English invasion, Munster and Connaught disputed the throne with the lords of Ulster and Meath, and the royalty of Ireland, no longer

the perogative of a single family, was attainable by any of the provincial kings. It was the recollection of this latter period—of the equality of the provincial kings rather than of the undisputed supremacy of one race—which was stamped upon the memory of the Irish people after the cessation of their native line of princes, and it would be natural to expect that any history composed or compacted after the English invasion would be framed upon the later model. Such has accordingly been the case, and no sooner are the limits of authentic history passed than the historic fact of this undisputed supremacy vanishes, and the equal pretensions of the provincial kings reappear. The whole pre-historic annals of Ireland have been re-modelled upon the ideas of the thirteenth and fourteenth centuries; many of the old legends contain valuable germs of truth, but the *framework*, the *setting*, must in most cases be discarded, for it is only too often the work of a thousand years later. It is in her Annals that the true history of Ireland should be sought, not in her "Books," her Pedigrees, or her Lives of Saints, all valuable in their way, but generally impregnated with the mediæval ideas of their compilers, who were certainly not superior to the age in which they lived.

In the earliest and most trustworthy of the Irish annalists, Tighernach, Abbot of Clonmac-noise, the ancient Celtic principle of "divided authority" is plainly visible, *two* confederacies, like the Ædui and Sequani, invariably claiming to exercise the royal authority, whether over the whole kingdom, or over any of the numerous dependant provinces. In the earliest portion of these annals two leading kingdoms can be traced, the capitals, or rather, perhaps, the royal residences, in which were known respectively as *Emania* and *Tara*. Emania, traces of which still remain at "the *Navan*," near Armagh, belonged to the northern kingdom, known as *Uladh*—the Celtic *Gulad*, *Gaul*, or *Home*—often pre-eminently distinguished as "the Province," and extending from the *Drowse*, flowing from Loch Melvin into Donegal Bay, to *Inver Colpa* at the mouth of the Boyne; thus corresponding closely though

not exactly with modern Ulster.* Tara was the capital of a kingdom to which two names belonged, that of *Laighin*, still surviving in Leinster, whilst *Gailin*—foreign or alien land—a name which the Leinster men would have probably ignored, must be traced to a time when all not included in Uladh—Gaul or *Deutsch-land*—would have been known as Gailin—or *Walsch-land*.† With *Cimbaeth*, the supposed founder of the northern kingdom, Tighernach begins his annals; and that the annalist considered the early history of Ireland to have been identical with that of "Irish Gaul" may be gathered from his accurate catalogue of the thirty successors of Cimbaeth upon the throne of Emania, whilst he only notices occasionally the thirty rival kings of the Leinster race of Tara, merely mentioning that "thirty kings of Laighin ruled over Ireland from Labhraidh Loingsech to Cathary Mor."‡

The most celebrated wars of the legendary period of Irish history were waged by the northern kingdom against *Olnemaght*, then possessed by the *Damnonians*, and against Carbry and others of the Leinster line of kings of Tara. The reign of "Conary Mor" is the era in which these wars are supposed to have been carried on, and immediately upon the death of that prince "Lugaidh of the red circles, son of the three Fins of Emania," reigns at Tara, "thirty kings of *Leth Cuin*"—or the north of Ireland—

* *Reeves' Eccl. Antiq.*, p. 352-57. The western portion of the province, therefore, included *Foclad*—the north—the principal seat of St. Patrick's labours, and the home of the northern Hy Nial, whose leading chieftain was known as king of *Aileach*—Ely, or "the place of fosterage"—when not "Ardrigh" of Ireland. The initial *G* has disappeared in *Uladh*, as the *V* in the similar case of *Andal*usia. There was a Campus *Vocladensis* ten miles from Poictiers *Greg. Tur. Hist. Ecc.*, l. 2, c. 37, 43. The Loire must once have been the *northern* boundary of some confederacy.

† *Gulad* and *Gailin* answer in many respects to *Deutschland* and *Walsch-land*. The recollection of Irish *Gailin* is retained in *Galway*, whilst that part of Scottish Cumbria which was for some time in possession of the Angles as the diocese of Whithern, probably acquired from their occupation of the district the name of *Galloway*. "The ancient Scots," says a writer of the seventeenth century, "until this day call the county of Caithness *Gallibh*" (*Col. de Reb. Alb.*, p. 307), *Gailinne* is also used for "the enemy"—der feind—or the devil; and *Gelyn* in Welsh means an enemy.

‡ *Tigh. A. C.*, 305, 89.

according to the annalist, "reigning at Tara, from Lugaidh to Dermot MacKerval," a prince of the southern Hy Nial, in whose days it was deserted.* The result of these wars would then appear to have eventually placed a prince of the northern kingdom upon the throne of Tara, the notice of Tighernach, who from this period preserves a list of the kings of Tara as well as of the Emanian line, seeming to identify the ancestry of the *Siol Cuinn* with the ancient lords of "Irish Gaul." At exactly this period Emania appears under the rule of a different line of kings, known as the "Clan Conal Cearnach," Tailten, the ancient burial-place of the lords of Uladh, was deserted for Brugh, the sepulchre of the Damnonian kings, where Lugaidh and his descendants were henceforth buried, and with the race of Concobar "the glory departed from Uladh;" or, in other words, Emania was supplanted by Tara, and Uladh, restricted to the eastern portion of the province, became the appanage of a different, though probably a kindred family. According to the invariable Celtic custom, the success of the "Guladach" had become the signal for their division, and a constant struggle for the supreme power is long traceable between the now kindred families of Tara and Emania.†

A little further on Tighernach notices the death of Cathary, the last Ardrigh of the Leinster race, who was killed in the battle of Tailten, when the island was divided between Con and Eogan Taidleach, the ancestor of the Eoganachts and Dal Cas. It is not a little remarkable

* *Tigh. A. D.* 44. As Con is supposed to have been seventh in descent from Lugaidh, *Leth Cuin* must be here used in anticipation for the north of Ireland. It is almost needless to observe that the paternity of the ancestor of the race of Leth Cuin is mythical. He is evidently the first known man of the family. The second capture of *Bruighin-da-bergha* is supposed to have led to his accession. *Olnemaght* is supposed to have been divided into 1. *Irros Domnon*, extending from the river of Galway to the Duff and Drowse (the latter dividing it from *Uladh*). 2. *Fir Craebe*, from the palace of Fidhac (?) to Limerick; and 3. *Moy Sainbh*, from the palace of Fidhac to Tara in Moy Bregh, thus comprising in a general way, Connaught, Meath, and Thomond. *Rer. Hib. Scrip. Vet.*, vol. 2, p. 11, note 38.

† Old poem and *Leabhar na h'uirdre*, quoted in Petrie's *Essay on Tara*, p. 98, 105.

that Tailten was the scene of the final triumph of *Heremon* and *Heber* over the *Tuath-De-Danan*, after which they are also supposed to have divided the island between them. Nor is this the sole coincidence between the two periods, for *MacCecht*, one of the Damnonian opponents of the sons of *Milesius*, reappears as the ancestor of the Clan na Morni, and one of the antagonists of Concobar and his Ultonians; and other instances might be brought forward tending to identify this period with the supposed era of "Milesian" supremacy.* The name of Olnemaght, the old Damnonian kingdom, fades away, and its western portion, *Irros Domnon*, becomes known as *Connaught—Con iochta*, further or lower Con—the *Irros*, or promontory, of the Damnonians being confined to the tract of country west of the Moy, where the name still lingers in the barony of *Erris*. About the same period, probably, the ancestry of the Eoganachts and Dal Cas acquired a supremacy over the earlier clans of Munster, known as Clan Dairfhine and Clan Degad, or Ernaans.†

Amongst the most prominent legends of the pre-historic period is the rising of the *Aitcach-Tuatha*, the Lætic *coloni*, or alien population—in other words, the original population

* *Tigh.* 33, 165. *Bk. of Rights*, p. 205. *Ogygia*, pt. 3, c. 16. In the Irish legends the same story is constantly being repeated, a peculiarity by no means confined to Ireland. Thus their saints are always meeting with a king with twelve sons; or with two brothers, one a perverse heathen and cursed accordingly, the other a devout Christian, and of course the ancestor of the reigning family.

† Amongst the *MSS.* in the Bodleian library noticed by Dr. Todd (*Proceedings R.I.A.*, vol. 2, p. 336) is one entitled "Account of the war between Oilil Ollum (son of Eogan) and Lugaidh Mac Con, who was deprived of his inheritance by the former." This Oilil fought the battle of *Cenfebrat* "against the south of Ireland" under Lugaidh Mac Con and Nemidh king of Ernaans—*Tigh.* 212. There was evidently a time when "the south of Ireland" was not "the inheritance" of the ancestry of the Eoganachts and Dalcas, but in the possession of hostile clans. The Ernaans were of *Fir-Bolgic* origin, from *Loch Erne*, from the neighbourhood of which lake their ancestor *Deag* was driven by the Uladach. The clan Dairfhine were of acknowledged non-Milesian descent. The name *Dair-fhine* means "servile tribes." The name of the southern province *Muimean* seems to have been derived from *Muime*, a nurse or foster-mother, as if it were not the original mother country—the *Gulad*—of its ruling tribes, but the *fosterer*, a character everywhere belonging to the dependant and often alien class.

attached as a servile class to the land—against their lords, three only of the latter escaping destruction, the ancestors respectively of the ruling clans of Leth Cuin, the later Uladh, and Munster; a legend incidentally confirming the fact that these were the true *Milesian* races, whilst the omission of all notice of the Leinstermen seems to point to their *Damnonian* origin.* Another pre-historic legend, bearing strong internal evidence of truth, is the conquest of Emania by the *Collas*, through which the *Uladach* lost the "plains of Conal Cearnach," comprising the counties of Armagh and Louth, and were confined to the eastward of the rivers Bann and Newry, or to the counties of Down and Antrim.† These Collas were traditionally the ancestors of the *Airgiallach* and *Hy Many*, whose position in early historical times throws a remarkable light upon the true history of this period. Nial, the ancestor of the Hy Nial whose real supremacy in historic times was never successfully disputed before the days of Brian Boroimhe, is invariably known under the title of "Nial naoi-giallach," or Nial of the nine hostages, the power which he transmitted to his descendants having evidently been based originally upon the exaction of these "nine hostages;" or, in other words, upon the extension of his superiority over the people whose obedience to his authority must be inferred from the very fact of giving hostages, the invariable mark of submission. The "nine hostages" were given by the *Airgiallach*, one from each of the Cantreds of that district, the very name of which means "Eastern hostages," the *Western* being their kindred the *Hy Many*, who held a position in Connaught exactly similar in every respect to that which "the Eastern hostages" filled in Ulster. These descendants of the Collas in historic times claimed as their own the *third* part of the province, the *third* of the Eric, the *third* of all treasures—the "tertius denarius et tertia pars bannorum"—resembling the Sequa-

* *A.F.M.* 10. The kings of Leinster were of acknowledged Damnonian origin according to O'Flaherty. *Ogygia*, pt. 3, c. 30, 56, 70. The province is supposed to have been made over to the Damnonians by Heremon.

† *Tigh.* 332.

nian Gauls under Ariovistus and his Germans, the *Roman* under the Burgundian, or Visigoth; or standing in the position of the royal Jarl, Graf, Ealdorman, or Maor; or of the Herenach, the "Advocatus ecclesiæ," of their native land; in other words, filling the position of a subordinate, or deputy, appointed by a superior, or continuing, as such, to hold the lands which were once his own. Their exemption from military service in spring and autumn—during "seed time and harvest"—looks as if originally certain agricultural services were expected from them (for what mattered it to the non-cultivating "duchasach" of the blood of the Hy Nial at what season of the year he was summoned to war), whilst the supposed privilege that one of their race could be only convicted by the testimony of another of the same kindred, recalls the strictness with which the *Barbarus* and the *Romanus* were originally confined to their respective codes. None of this race could ever aspire to fill the throne of Ireland, or even to attain to the position of a provincial king.*

When the Clan Colla overthrew the Uladach, their followers are described as "seven bands of the Damnonian Bolg clans called Olnemaght," these seven bands answering exactly to the seven Cantreds of Hy Many—the district of which the modern name of *Galway* yet retains traces of ancient *Gailin*—and it would seem as if the destruction of Emania and the overthrow of the Uladach were the results of a rising of the population whose kings once ruled at Tara.† Emania, however, was not the only conquest of the Clan Colla; they had previously defeated "Fiacha of the red circles," of the race of Lugaidh, king of Ireland, and usurped his throne, the historians of Leinster maintaining that the successful opponent of Fiacha was a king of their own province;‡ and it is difficult to avoid suspecting that the traditions of this period have been adapted to suit the prejudices of the dominant race, and that, in reality, from this epoch the supremacy returned to the rival race until the conquests

* *Tribes, etc. of Hy Many*, p. 63-5-7. *Bk. of Rights*, p. 135, 137, 147.

† *An Inisf.* 322 quoted in *Rer. Hib. Scrip. Vet.*, vol. 2, p. 76. ‡ *Tigh.* 322.

of Nial re-established the authority of the family of Lugaidh of Emania, and reduced the Clan Colla to the position of subordinates. How much of their respective provinces belonged to the ancestry of the Airgiallach and Hy Many before they were restricted to the *thirds?*

It would appear, then, as if the north of Ireland had once been the *Gaul* or Home of the ancestry of those tribes who, by the conquest of *Olnemaght* and of the greater part of *Leth Mogh*—"the servile half"—became the dominant race in Ulster, Munster, and Connaught; whilst the Leinstermen represented the descendants of the people who had once owned the centre of the island—the seat of the supreme power—before the unsuccessful issue of their great struggle with their northern rivals. A continual division of authority between two confederacies is as marked a feature of Irish history as it was amongst the Gauls in the days of Cæsar, and after the expulsion of the Leinstermen from Tara, the Eastern *Uladach* seem to have held the second place—like the Sequani or Rhemi in Gaul—until their power was broken by the Clan Colla, who would appear to have thus attained to the second position, if not, at least for a short time, to the first. No great difference of origin may have really existed between the rival clans of Ulster and Leinster, any more than between the Jute, the Angle, and the Saxon; or if any, only as much as led the Franks to look upon the descendants of the Suevian Semnones as *Alamanni* or Aliens, a distinction still traceable in the name of the Frank *Galway*—if it may be so termed—*Al*-sace (*El*-satz). By all the "yellow-haired" Gaelic races the greater part of the "dark-haired" people had probably been reduced long before to the condition of *Aiteach-Tuatha* or *Daer*-clans, constituting the bulk of the servile population attached to the soil.*

* The greater preponderance of the "dark-haired races" in the south appears to have exercised an influence upon the character of the southern population, for in the description left by Giraldus of the Irish of his day may be recognised the features ascribed in Irish tradition to "the tall, fair, yellow-haired Gael," and "the small, black, lying, Fir Bolg"—the original Celt and his predecessor. "The northern race is warlike, the southern ever treacherous; the one eager for honour and confiding in their martial

The Eastern *Uladach*, often known as the Clan Rory, or Clan Conal Cearnach, were identical with the *Cruithnech* or Irish Picts, and it is a question whether they are to be regarded as a body of allies, called in to the assistance of the Western Clans, and establishing their own predominance, much as Ariovistus and his Germans might have done but for the intervention of Cæsar; or whether the inhabitants of the western portion of the ancient province, the men of *Foclad*, shared in the same origin, and were also members of the painted race of *Gwyddel Ffichti*.* In the account of the Cruithnech in the *Irish Version of Nennius*, it is stated that "thirty kings of the Picts ruled over Erin and Alban," some copies reading Erin and *Uladh*, and these kings surely correspond with the thirty kings of Emania recorded in the Annals of Tighernach, as well as with the thirty descendants of Bruidi who are said to have reigned over Alban and Erin in the old "Chronicle of the Picts." Prominent amongst these kings of the Cruithnech is a certain *Gede-Olgothach*, who sometimes figures as a son of the mystical *Ollamh-Fodla* (*Gollamh*, or Ruler of Ireland) and king of Erin, sometimes as Gede or Gud, son of Cathluan or Cruithne, the ancestor of the Picts, this Gede or Gud being identified by Mr. Petrie, in his *Essay on Tara*, with Heremon the Milesian.† In this case *Cruithnech* and *Milesian* are only different names for the same people, and there is not a little to be said in favour of such a theory. Concobar

prowess, the other loving deceit and trusting to artifice. The former strive for their end by open force and in battle; the latter by wiles and treachery."

* These Cruithnech are often supposed to have been *Britons*, and to have consequently spoken a language akin to modern Welsh. That *Cruithnech* is in a certain sense the old Gaelic form of *Brythoneg* is highly probable, but it does not necessarily follow that every *Brython* was a *Cymro*. In the early part of the Roman occupation of Britain all its inhabitants painted themselves—they were all *Brythoneg*—but they were certainly not all *Cymri*. The ancestors of the Bretons, for example, seem never to have acknowledged the name, and the Welsh traditions limit it to a portion of the original Celtic inhabitants, whilst their allusion to the *Gwyddel Ffichti* points to the existence of Gaelic *Brythoneg* or *Cruithnech*.

† *Irish Version of Nennius, R.I.A.S.*, p. 157, lvii., xcii., cxv., cxvi. *Petrie's Essay on Tara*, p. 153.

of Uladh is supposed to have conquered all the land from Loch an Choigeadh and Tara to the sea; his *Rath*, or fortified residence, was long pointed out at Tara, his sepulchre at Brugh—in other words, Emania the earlier residence, and Tailten the ancient burial-place of the kings of the Uladach, were deserted in consequence of these conquests for Tara and Brugh, the residence and sepulchre of the leading confederacy; for he who held Tara ruled supreme over Ireland.* It was about this time that the line of Leth-Cuin first acquired the supremacy at Tara in the person of Lugaidh of *Emania*—whose title "of the *red circles*," equally applied to his descendant Fiacha, has a very *Pictish* sound—whilst Emania itself, under the line of Conal Cearnach, sunk into a position of secondary importance; and it seems, indeed, a singular result if the successes of Concobar led to the depression of his own people, and the exaltation of a strange family to the supreme power.†

* *Essay on Tara*, p. 141, 145. According to an old tradition "Patrick preached to the men of the North, to *Ultu*, *Cruithne*, and *Dalnaraidhe*," and as the voices he heard in his dream came from the wood of *Foclad*, the people of that district must have been included under one of the two first designations. The close connection once existing between the *Siol Cuinn* and the *Clan Rory* is evident from the tradition in the Book of Rights, that there was the same prohibition against war between the two races as existed in the case of the clans of Eogan and Conal, the two branches of the northern Hy Nial—a prohibition in each case equally disregarded, if there is any truth in Irish history (*Bk. of Rights*, p. 239, 267). In the "Genealogy of Corca Laidhe," the battle of *Carn Mal* is said to have been gained over the race of Ir, Heber, and Heremon, who are subsequently noticed as *Ulstermen*, and men of *Fail* or *Eire* (*Miscell. Celt. Soc.*, p. 7, 67, 69). In fact, if *Foclad* or western *Uladh* was not the original home of the ancestry of the Siol Cuinn, they must have been *Fir Bolg*. The names of *Nial* and Clan *Ruadhraigh* (Roderic) are rather remarkable, considering that tradition gives a *Saxon* origin to Nial on the mother's side, and makes the wife of Lugaidh, the ancestress of the whole race, a princess of *Lochlan* or Scandinavia—*Tigh.* 79, 358.

† There is a mutilated fragment of Tighernach (*An.* 171) in which the annalist says that when Con was on the throne seven kings of the Picts had reigned over Ireland. Con was himself the *seventh king* of the race of Lugaidh of Emania. There is a passage in the *Origines* of Isidore which seems to bear strong testimony upon the point in question—"Scoti propriâ linguâ nomen habent a picto corpore, eo quod aculeis ferreis cum atramento variarum figurarum stigmata annotentur." *Isid. Orig.*, l. ix., c. 2. There can be no mistake about the people to whom he alludes, for else-

After the Uladach were confined within their later historical boundaries, their two leading confederacies were the clans of Uladh proper, or the diocese of Down, sometimes known as the *Dal-fiatach,* and the tribes of *Dal-araidhe,* "the district of the Airds" or Uplands, answering to the diocese of Connor, to whose chieftains the title of "king of the Cruithnech" is often given. A third confederacy subsequently rose into consideration, descended from a certain Eocha Mac Conla, king of Uladh, and occupying the south-western portion of the province, or the diocese of Dromore, under the title of *Hy Eachach Cobha* or *Iveagh.* All these clans were probably of kindred origin and were known collectively as Uladach, though that name belonged more particularly to the people of the diocese of Down.* Towards the latter part of the eighth century

where he says, "Scotia, *eadem et Hibernia* . . . . quod a Scotorum gentibus colitur, appellata," l. xiv., c. 6. As at the period when Isidore wrote—he died in 636—self-painting was obsolete in Ireland, he must be repeating the statement of some long-forgotten authority of an earlier age; and I cannot see how the inference is to be avoided that the *Scoti* were once known in their own language by a name derived from the habit of self-painting; in other words, by the name of *Cruithnech.*

* Malcath Mac Scandal, whom the Four Masters call "lord of the Cruithne of *the race of Ir,*" is the first, and Flathrai Mac Fiachna, a grandson of Malcath's brother Dungal, is the last "king of the Cruithnech" mentioned in historical times. *Tigh.* 629. *An. Ult.* 773. Tighernach, *ad an.* 553, is my authority for the descent of the *Iveagh.* The family of "Fiatach the fair," traditional ancestor of the Dalfiatach, is supposed to have supplied kings to Uladh alternately with the Clan Conal Cearnach after the line of Concobar had ceased to reign at Emania; and as in historical times the two leading confederacies sharing or contesting the supreme authority in each of the provinces were invariably branches of the same race, there seems no valid reason for supposing that Uladh formed an exception to the universal rule. In Ireland, however, as in Scotland, a *Pictish* origin was not in favour. The race of Conal, indeed, becoming extinct or forgotten, was left to its fate; but the "O'Donlevy," the head of the Dalfiatach, was long a personage of importance, and accordingly the framers of the pedigrees relieved his family from the Pictish stigma by engrafting it upon the main Milesian stem as an illegitimate offshoot of *Ernaan* origin —"quite different from the Ernaans of *Fir-Bolgic* origin," as O'Flaherty hastens to explain, a troublesome race whom he drowns in the waters of Loch Erne as ruthlessly as Keating destroys the equally troublesome "*Plebeians*" of Milesian origin by a pestilence, so discriminating as to spare the nobility and vent its fury solely upon the lower orders! It will be found almost invariably that the ruling families in those petty kingdoms—generally situated amongst mountains or morasses—which appear in the *Book of Rights* on

the Ulster annals bear testimony to an obstinate contest raging amongst the Dalaraidhe, the victors being described as Tomaltach Mac Inrechtach, and Eocha Mac Fiachna, to whose son Duncadh the lords of clan Dermot, a territory situated within the limits of ancient Dalaraidhe, subsequently traced their origin. After this period the sons of Bresal Mac Flathrai, the last chieftain of his race noticed in the Ulster annals under the title of king of Dalaraidhe, appear as lords of Dalaraidhe *Tuisceart*, or the *northern* Uplands; and as the names of Kenneth Mac Cathusaigh, Dungal Hy Fergus Forcridh, and Fogartagh Hy Conalta, all telling of the clan Colla, occur in connection with these wars, it would appear as if their results entailed upon the ancient lords of Dalaraidhe the loss of the districts afterwards known as clan Dermot and Hy Tuirtre, and limited their authority from this time forward to *Tuisceart*.* Tomaltach, Malbresal of Cobha, or Iveagh, and lastly Lethlobar Mac Loingseach, the ancestor of the subsequent line of kings of Dalaraidhe, and sometimes, but rarely, of the whole province, were lords of the district at the close of the eighth and the opening of the ninth centuries, the more ancient line holding under them their circumscribed dominion of Tuisceart. Broken in power, and now beginning to sustain the assaults of a new and deadly foe, the Northmen, towards the middle of the century, disappear from Irish history, the last known member of the race figuring as a churchman, but not therefore escaping the fury of his heathen enemies.† It is at this period that the south-western portion of Scottish Cumbria, which had once been occupied as the diocese of Whithern by the Northumbrian Angles, is sometimes supposed to have received a new population, imprinting upon

a tributary and dependant footing, have been grafted upon the great Milesian stem by fanciful, and sometimes revolting legends, usually revealing a wrong affiliation.

* *An. Ult.* 773, 775, 782, 791, 823, 832, 848. *Reeves' Ec. Antiq.*, p. 363. The *Hy Tuirtre* were a branch of the Clan Colla. The "Ecclesiastical Antiquities of Down, etc.," is a work full of information on the ancient state of the united dioceses, and all acquainted with it will be fully aware of the extent of my obligations in this sketch to Dr. Reeves.

† *An. Ult.* 848.

the topography of the country the evidences of a Gaelic dialect, and dedicating their churches to the saints popular amongst the clans of the opposite Irish coast; and if the conjecture is correct, when, in the thirteenth century, John granted the whole territory of *Dalreth, Tuisceart,* and other neighbouring districts, to Alan, lord of Galloway, there may have been a foundation for the claim of the Galloway chieftain in some dim traditionary connection with the earlier line of the princes of Dalaraidhe.*

* *Reeves' Ec. Antiq.* p. 323-4. *Dalreth*, as distinguished from *Tuisceart*, must here mean southern *Dalaraidhe* (of which name it is evidently a corruption) or some part of it—any part, in short, rather than *Tuisceart*, to which it cannot apply. About a century later this part of the old district fell into the power of a junior branch of the O'Neills of Tyrone, and the earlier name died out in that of *Clannaboy*. It appears, however, to have lingered on under the corrupt form of "the *Route*" in *Tuisceart*, the latest home of the old line of princes, which was also known subsequently, from the name of a family of Welsh origin, as "Mac Quillan's country." It is exactly in this quarter that Irish *Dalriada* is usually placed, a little mythical kingdom unknown to the early annalists, for Tighernach never applies the name to any other locality than *British* Dalriada. History is totally silent about its princes, and it is utterly impossible to define its extent or boundaries at any historical period, without intruding upon the territories of historical personages. Its existence in prehistoric times is equally dubious, but to argue such a question gravely would be like giving battle to a shadow, (*Reeves*, p. 72, 343).

Appendix I.

PICTS AND SCOTS.

Few questions have been fated to originate more fierce debate than the origin of the Picts and Scots, the pages of Father Innes, Chalmers, Pinkerton, Ritson, and others, affording ample information about the numerous theories advanced upon this much vexed subject, to all who may feel any interest in the wordy warfare. Much of the mystery and confusion enveloping the subject under discussion may be traced to the names themselves, which are as arbitrary and unreal in their nature as that of *German*, applied by us alone to the people called *Allemands* by the French, *Schwabe* by the Magyars, *Niemcy* by the Sclavonians, and by themselves *Deutsch*, a name which *we* again apply to the *Hollanders*. The Celts, as may be gathered from the Welsh laws, were accustomed to call their own country, or province, *Gulad*, and all beyond the frontier *Gor-Ulad*—a vague word simply meaning "extraneous" or "over the border," and applied to any country immediately beyond a frontier, without necessarily implying an alien origin in its inhabitants. Thus, in one sense, Powys was *Gor-ulad* to Gwynedd, Gwynedd to Powys; in another, all beyond the limits of *Cymru* was *Gor-ulad*, the people beyond their frontiers being known to the Cymri in the days of Beda as *Garmani*. This vague Celtic word was applied by the Romans to the people upon the right bank of the Rhine beyond the limits of *Gulad*, who at the period of Cæsar's occupation of Gaul were mostly of Teutonic origin; and thus *Germanus* became the classical name for all the people of that race with-

out ever being acknowledged or adopted in their own tongue as a national appellation.* Exactly in a similar manner *Scotia* and *Scotus* first appear in Latin authors as the classical names of Ireland and her inhabitants, never acknowledged or adopted in the native language of that country, though often used as Latin names by her early writers. *Scotus* is next found as the Latin name for a descendant of the Irish colonists from Northern Dalaraidhe, who, early in the sixth century, established their authority over a district answering to the modern county of Argyle to the southward of Lochs Linne and Leven,

* The passage in *Bed. Hist. Eccl.*, l. 5, c. 9, is as follows:—"Angli et Saxones qui nunc Brittaniam incolunt . . . . . hactenus a vicina gente Brittonum corrupté *Garmani* nuncupantur." Zeuss (*Gram. Celt.*, p. 735, note **), derives the word *Germanus* from the Welsh *ger*, Gaelic *gair*, implying *vicinity*, but I think it was merely the Latinized form of the word applied by the Gauls to any dweller in *Gor-Ulad*. If the mutilated inscription on the *Fast. Capit.* can be relied upon, the word was known to the Romans as early as the triumph of Marcellus "de Gallis Insubribus et *Germanis*." It may be gathered from Polybius that these *Germani* were Transalpine Gauls from the neighbourhood of the Rhone, known as Γαισαται Γαλατικοι from serving for pay—rather perhaps as *Lanzknechts*—and differing from the Cisalpine Gauls in *situation*, not in *race*. This is exactly a case in point, for to a Cisalpine Gaul all beyond the Alps was *Gor-Ulad*, and the passage should probably be translated "over the Insubrian and *German* Gauls," *i. e.*, Gauls of *Gor-Ulad*. So in the passage of Livy relating to the passes of the Alps held by *semi-Germanic* tribes, the historian should be supposed to mean, not that the people were partly of *Teutonic* race, but from *both sides of the Alps*. The Oretani in Spain were *Germani*, but scarcely *Teutonic;* and when Cæsar's informant described the Belgæ—*Fir Bolg* or invaders—as "plerumque ex *Germanis* orti," he meant, probably, rather that their ancestors were "men of *Gor-Ulad*" than that they were *Teutons*. Four of their tribes were known as *Germani*, and they were situated beyond the Ardennes, which seems to have bounded *Gulad* in this quarter rather than the Rhine; for the Treviri, who were not included either in the Belgic or Celtic confederacies, were beyond the Ardennes, and though looked upon as Gauls by Cæsar, were particularly anxious to claim a *Germanic* or extra-provincial origin. The first real Teutons across the Rhine seem to have been the *Tungri*, who are so often confounded with the *Turingi* in later days. *Polyb.*, l. 2, c. 15, 22, 34, 35. *Liv.*, l. 21, c. 38. *Niebuhr's Lectures on Hist. Rome* (*Schmitz*), vol. 2, p. 65, note 16. *Plin. Nat. Hist.*, l. 3, c. 4. *Cæs. de Bel. Gal.*, l. 2, c. 24, 25. There is a word which Alfred uses in his tradition of Orosius, which looks as if it had partly a Celtic origin—*Garsecg*, "*outer* sea." The names of two other confederacies probably came to the Romans through a Celtic medium—the Cimbri and Teutones—the latter word far more resembling the Latinized form of the Welsh *Tudion* than any early form of the word that has now become *Deutsch*.

with a few of the neighbouring islands; and from this period, until the middle of the ninth century, the name of "Scoti in Britannia" belonged to the clans of Lorn, Cowal, and Kintire, who are generally noticed in the Irish annals as *Dalriads*, or the clans of *Dal-riada*, a name which they probably acknowledged, as it is found in Beda. After the latter date the chieftains of Kintire—for the lines of Lorn and Cowal were then extinct—are found at the head of the leading confederacy of North Britain, though the Latin title of *Rex Scotorum* is not given to the *Ardrigh* before the following century—the tenth—the name of *Scotia* from about this period gradually being transferred to North Britain beyond the Forth and Clyde, and ceasing to be applied to Ireland. It was still, however, merely a name used by chroniclers, or by the compilers of saintly legends, for the treatise "de situ Albaniæ," written in the twelfth century by Andrew, Bishop of Caithness, begins with the words, "Albania quæ nunc corrupte Scotia appellatur." From the tenth century, then, the title of *Rex Scotorum* was applied to the king of all the tribes beyond the Forth and Clyde, whose subjects now began to be known in the language of their southern neighbours as *Scottas* instead of *Peohtas;* though the name of *Scoti* long continued to be more particularly given to the people of the south and east, in contradistinction to the *Moraymen*, who occupied the whole extent of country beyond *Drum-uachter* and the Grampian range to the westward of the Spey, until they bordered upon the *Oirer-Gael* or "Gael of the coast," who peopled the western coasts to the confines of the Norwegian *Sudr-land.* In the charters of the twelfth century *Scotus* denoted a subject of the Rex Scotorum who was neither *Francus*, *Anglicus*, *Walensis*, or *Galwalensis*, and to speak *Scotice* in those days was to use the language prevalent beyond the Forth, the language in which the venerable bard who figured at the coronation of Alexander the Third enumerated the royal ancestors of his youthful sovereign; in other words, *Gaelic*, as distinguished both from the Norman French, in which the Bishop of St. Andrews explained to the young king the

nature of his oaths and obligations, and which was at this period evidently the dialect of the Court; and from the "quaint Inglis" spoken in the Lothians, and in all, or most of, the royal burghs. The English wars stamped a nationality upon the descendants of these various races, and as the use of Norman French died away, and the "quaint Inglis" of southern Scotland and the civic population became the language of the king and his nobility, spreading gradually over the whole of those lowland districts which had long formed the heart of ancient *Alban*, the Gaelic tongue, rather than the Gaelic race, was at length confined to the mountains, and the names of *Scot* and *Scotland* were adopted as national and generic terms from the language which had now become the national speech. Henceforward to speak *Scotice* was to talk in the Lowland tongue, and the speakers of this Teutonic dialect, regarding themselves as the true *Scots*, looked upon the language of the mountaineers as *Erse* or Irish, and upon the mountaineers themselves as *Irish* Scots; a mistake which has wreathed many another cloud of mystery around this much vexed question.

The name of *Picti* was most probably given vaguely by the Romans to all the extra-provincial tribes who adhered to the custom of self-painting. *Cruithin-Tuath —Peohta-theode*—is occasionally used by the Irish writers for North Britain, and the name of *Cruithnech* may have been acknowledged at an early period by the people themselves, though scarcely as a generic appellation, belonging rather to a confederacy than to a people. More than one instance might be cited of the sudden and inexplicable rise of such a name, disappearing often as suddenly and as inexplicably as it arose. That of *Saxon*, first applied in the geographical treatise of Ptolemy to a few tribes bordering upon the ocean, was acknowledged in the days of Charlemagne by a numerous confederacy spreading from the Elbe to the Rhine over *Westphalen*, *Engern*, and *Ostphalen*, as well as by the majority of those Teutonic settlers in Britain who appear to have landed upon the southern and south-eastern coasts of the island. Where is it known now? Nowhere amongst the populations

whose ancestors dwelt in the localities just named, but in the eastern parts of Thuringia, and in districts still farther to the eastward, conquered from the Wend and the Sclave. History sheds too clear a light upon the Saxon people of Britain and the Empire, or this migration of the name might have been accounted for by the migration, or conquest, of the people once bearing it.* A passage in Isidore seems to point strongly to a time when the name of *Cruithnech* was acknowledged as belonging peculiarly to the Irish *Scoti*,† but it died out early beyond the Channel, probably with the custom out of which it originated, and with the ninth century it vanishes as mysteriously from Northern Britain. In each case there is a vision of a powerful kingdom and a numerous people suddenly disappearing without leaving a trace scarcely of their former existence—for the Picts of Galloway can no more be regarded as the representatives of the whole race than the Dalriads can be looked upon as the representatives of the Irish *Scoti*—and in each case it may be safely assumed that the name rather than the people has disappeared.

Every theory assuming that the Picts, or at least that the great body of that people, spoke a different language from Gaelic, necessarily attributes the introduction of the latter language over the whole of northern Scotland to a conquest, usually supposed to have been achieved by the Irish Scots of Dalriada towards the middle of the ninth century. Henry of Huntingdon, writing in the middle of the twelfth century, remarks that not a trace then existed of the Pictish people or of their language ;‡ and as a

* The *name* of Saxon extended over the Chamavi, Angrivarii, Chauci, and other tribes, who were not conquered or exterminated by a separate Saxon race, but united in the confederacy to which that name was applied. So the Frank confederacy embraced a number of separate tribes, one of which, the Chatti, ceasing to use the name of the confederacy to which they once belonged, is again known under the earlier tribe-name of *Hessians*, which approaches its older form in *Katzen*-ellenbogen. The origin of the name of *Sachs* it would be a difficult question to determine, but the word that comes nearest to it is that which the Franks applied to an adversary or opponent—not a *Walsch* or *Alaman*—Ga-*sach*-io.

† Scoti propriâ linguâ nomen habent a picto corpore, etc., *Isid. Orig.*, l. ix., c. 2.

‡ Picti jam videantur deleti et lingua eorum ita omnino destructa ut jam

Celtic dialect is still spoken amongst the Cymri and the Bretons, and has only died out in the comparatively small county of Cornwall within the last century, a conquest eradicating every vestige of this people and their language in less than three hundred years must have necessarily been more than ordinarily overwhelming and exterminating. It remains to be seen how far such a conquest could have been effected by such an agency as the Irish Scots of Dalriada.

From a passage in Adamnan's Life of St. Columba, it may be gathered that in the latter part of the sixth century the influence of the Pictish king extended over the Orkneys, whose prince gave hostages, the usual sign of submission, to Bruidi MacMalcon;* whilst on their southern frontiers the Picts undoubtedly bordered upon the territories of Northumbria and Strath-Clyde. The Orkneys, and probably the Hebrides, or at least the northern isles, or *Nordreys*, were occupied by the Norwegians, or rather by the mixed race known as *Gall-gael*, before the middle of the ninth century, but no impression had as yet been made upon the mainland, and it may be safely affirmed that at this period the whole of *Alban*, or Scotland beyond the Forth, with the exception of that portion occupied by the Irish Scots, belonged exclusively to the Picts. The three small tribes of Dalriada never extended their authority beyond Loch Linne and Loch Leven, or to the eastward of the wild tract of moor and mountain separating Argyleshire from the western confines of the shire of Perth. Their wars in North Britain were generally carried on against the Britons, and usually upon the debateable land between the Forth and Clyde, the defeat of Aidan at Degsa'stan permanently checking their inroads upon the Angles, whilst in the very few contests recorded between the Dalriads and Picts the latter were invariably the victors. One only of these battles—and even this is doubtful—was fought to the northward of Loch Leven, and in this also Donald Brec was defeated.†

fabula videatur quod in veterum scriptis eorum mentio invenitur. *Hen. Hunt.*, l. 1. *Mon. Vet. Brit.*, p. 694.

* *Adam. Vit. Col.* (*Reeves*), l. 2, c. 42.

† *Tigh.* 638. *An. Ult.* 637. Dr. Reeves places *Glen Mairison*, which is

Adamnan, writing apparently in the last years of the seventh century, laments the downfall of the race of Aidan in his own times, and within thirty years of his death the tribe of Lorn was exterminated by Angus the Pict; and as the fate of the two sons of Selvach seems to have been sealed by the capture of *Dunad*, ominously situated in the heart of the territories of the Clan Gabhran, Dalriada had certainly not extended beyond its original limits at this period.* Exactly at this time a gap appears in the line of Dalriad princes which it is utterly impossible to supply from any historical source; a stranger, Doncorcai, is one of the only three kings of the district henceforth noticed in the Irish annals;† and the *Albanic Duan*, the sole document that can be in the least relied upon for completing the royal pedigree—for all the early Latin authorities are hopelessly at fault—palpably introduces at least two kings of the Picts amongst the line of Scottish princes. The fatal period of the utter annihilation of the Pictish race is passed over as unnoticed by the Irish annalists as by the chroniclers of the Anglo-Saxons and the Welsh, the contemporary authority of Nennius still assigning one-third of Britain to the race supposed to be extinct, but who are still surviving to be joint sufferers

sometimes identified with *Glen Morrison*, in "the debateable land" between Forth and Clyde. This district he seems inclined to identify with *Manan*, probably the *Manau Guotodin* from which Cynedda Wledig came with the ancestry of "the noble tribes" of Wales. It may once have extended beyond the Forth, where the name is retained in *Slamannan* and *Clackmannanshire*. *Adam. Vit. Col.*, p. 371-72, *d*. The *Lennox*, which was undoubtedly connected with the *Cymri*, or Cumbrians, in early times, seems to have anciently extended in this direction beyond the Forth; for Tullibardine, Auchterarder, and Kincardine, are described in old charters as situated in *Cathair Levenachs*. *Reg. Morav. Cart. Orig.* 10, 12.

* From Dr. Reeves's Memoir of Adamnan he appears to have died in 704, and written his Life of Columba about 697. *Dunad* is in the parish of Glassary, close to the Crinan Canal, and in the heart of the territories of the *Clan Gabhran;* and coupling this significant fact with "the siege of *Aberte*," or Dunaverty, at the extreme limit of Cantyre, by Selvach in 712, and with the expressions of Adamnan, it is evident that the tribe of Lorn had at this time completely supplanted the line of Kintyre. *Tigh.* 736. *Reeves's Adam.*, l. 3, c. 5, p. 377 *b*, p. 380 *m*. Here and elsewhere I use *Cantyre* for the district, *Kintyre* for the kingdom.

† The *An. Ult.* 777, 780, 791, only mention the deaths of Aodh Fin, Fergus, and Doncorcai, kings of Dalriada.

with the Britons of Strath-Clyde from the inroads of Halfdene in 875.* Kenneth the First and his immediate successors—his brother and his two sons—are noticed in the Irish annals under the title of "king of the Picts," a title which gradually merges into that of "king of *Alban*;" and it is the Pictish people under the first Constantine of the line of Kintyre, who, many years after their supposed annihilation, are the opponents of Ivar, Olave, and his son Thorstein.† It is utterly impossible that the Picts could have been exterminated and their language eradicated by the broken remnants of the insignificant tribe of Kintyre, and it is equally improbable that such a conquest, if it ever took place, should have escaped the notice of every contemporary writer. The Pictish *name* disappeared, but the Pictish people and their language remained as little influenced by the accession of Kenneth MacAlpin, apparently in right of his maternal ancestry, as they were at a later period by the failure of the male line of the same family in the person of Malcolm the Second, and by the similar accession, in right of his maternal ancestors, of a prince of the *Pictish* house of Atholl.

Every theory, then, that depends upon the apocryphal conquest of the Irish Scots over the Picts must necessarily fall to the ground. Even if it is assumed that the accession of Kenneth MacAlpin was the result of a partial or a gradual conquest, limited at first to the southern portion of northern Scotland, or the ancient territories of the southern Picts, the gradual progress of the royal power over the eastern and northern provinces is plainly traceable in the early history of the monarchy, and many generations passed away during which the northern tribes paid little more than a nominal obedience to the king of Scots.

* *Hist. Nen.*, c. 5. *Chron. Sax.* 875. The "Irish Version" adds, "afterwards the Gaels *took the same division*" (c. 8, p. 43). Whoever the author of the History of Nennius may have been, he wrote after the middle of the ninth century. The *Chron. Sax.* 891 alludes to the arrival of "three *Scottas* from Ireland," and the authors of the earlier part of the Chronicle, before the tenth century, seem still to have applied the names of *Scottas* to the Irish, and *Peohtas* to the inhabitants of North Britain.

† *An. Ult.* 857, 861, 865, 870, 874-75, 877, 900.

Not a trace either of extermination or of gradual colonization can be detected during this period amongst those mountainous regions whose people, bound by few ties to the southern king, were ever ready to support a Mac-William or a MacHeth; and if the ancestry of the Moraymen, or of the western clans, had spoken a different language from Gaelic, their dialect, whether Cymric or Teutonic, would have lingered amidst the recesses of their wild mountains long after the days of Henry of Huntingdon.

To account for the prevalence of a Teutonic speech throughout the southern and eastern lowlands of Northern Scotland, the existence of a Teutonic people in this quarter before the twelfth century is often vaguely assumed as a fact, without specifying either their origin or the time of their settlement. Theories of this vague and sketchy description are perhaps the most difficult to deal with. Assuming, however, the existence of a population of this character—and it must be borne in mind that exactly in these localities the tradition of the Cymri places the *Gwyddel Ffichti*, and that *there* lay the heart and strength of the later Pictish as well as of the Scottish monarchy before the extension of the kingdom southward to the Tweed—it may be safely asserted that it was not of *Anglian* origin, the northern boundary of that people still being the Forth when Beda closed his History in 731. At this very period, and in these very districts, Angus was laying the foundation of the future kingdom of Scotland, and if the main body of the population of Scotland proper then spoke the Teutonic dialect which has lasted till the present day, how is it to be explained that to speak *Scotice* in the twelfth and thirteenth centuries was to talk *Gaelic?* If two distinct dialects of an origin so different had existed beyond the Forth in the days of Huntingdon, how could he have written about the extinction of the Pictish people and their language, when the dialect which was not *Scottish* would have assuredly been regarded as *Pictish?* Above all, Beda, who has left on record a Pictish word unquestionably of *Celtic* origin, was aware of no essential difference of race between the northern and

southern Picts, or indeed of any people of Teutonic origin in Britain, besides the Angles, Jutes, and Saxons; and if a still existing Teutonic dialect had then been spoken amongst the Picts, not a vestige of Gaelic would now be found lingering amongst the mountains of the north and west.

But did this Teutonic speaking colony arrive at a later period after the union of the Picts and Scots under the line of Kintyre? If so, it must have been of Scandinavian origin, and history, which has preserved the remembrance of the Scandinavian settlements on the northern mainland and throughout the western islands, is totally silent about any such colonization in the southern and eastern lowlands of ancient Alban. Where history is silent, topography sometimes reveals the secrets of the past, but in this case the map is as silent as the chronicle. In southern Britain, Guthrum's Danes blended with the population of East Anglia and Essex, exercising, in consequence, little if any influence upon the topography and dialect of the eastern counties. The case was widely different in Yorkshire and in Lincolnshire, where the *Caster* and the *By* mark how long the Northmen dwelt a separate and distinct people from the Anglo-Saxons, and the settlement under discussion must necessarily have been of the latter description, or the dialect of the colonists would have infallibly melted into the language of the earlier population. The historical settlements of the Northmen, though their descendants have long ceased to use the language of their ancestors, have stamped indelible traces upon the topography of the western islands and upon the northern mainland as far south as *Dingwall;* even the little band of Northmen that penetrated into Annandale has left many a *By* to attest their presence on the northern bank of the Solway; but the map may be searched in vain for any such traces in the northern lowlands of a band of colonists so numerous, and so important, as to retain this dialect which they never stamped upon the face of the country, and to perpetuate it as one of the original sources of the lowland Scotch spoken at the present day! The

existence of such a population in such a quarter is as apocryphal as the mythical Scottish Conquest.*

The pre-existence, however, of a Cymric population, that is to say, of a people speaking a Celtic dialect akin to Welsh rather than to Gaelic, is a question of a totally distinct character from the identification of such a population with the *Gwyddel Ffichti*, the ancestors of the dominant race in ancient *Alban*. The whole of the diocese of Glasgow between the Clyde and Forth was undoubtedly once in the possession of a Cumbrian population, which probably extended at some period of the Roman occupation of the island as far as the Tay, the northern boundary of the Damnonii; but it would be extremely difficult to pronounce, with any certainty, whether that river formed the extreme limit of their colonization towards the north, or whether at some long forgotten period before the arrival of the Gael they occupied the whole of the northern districts of Scotland. The natural features of a country are the first to receive their names, and the mountain or the moor, the river or the lake, often retain their original appellations long after the language in which their names were once intelligible has ceased to be spoken in their vicinity. The habitative nomenclature—if the use of such an expression is allowable—arises subsequently, and is frequently traceable to a different source; as in England, where the *ham* and the *by*, the *ton* and the *borough*, are Teutonic, whilst the hills and the rivers often retain the original names which they have derived from some other source. In ancient Alban the "habitative nomenclature," which is not Teutonic, has invariably been imposed in a Gaelic dialect, the *bal* or *bally*, and the *kil*, the *dun*, and the *rath*, belonging unquestionably to that division of the Celtic language; but it would be hazardous to affirm the same as an indisputable fact of the names which have been stamped upon the natural features of the country. The *aber*, which is found in Wales, in Cornwall, and in southern Scotland, abounds also beyond the Forth, and though the word itself is traceable to a Gaelic as well as

* For the various Scandinavian settlements, *Vide Appendix M.*

to a Cymric source, it was apparently as unused amongst the Irish Gael as *inver* amongst the Welsh. The Cymric *ystraed* and *mocl* are met with throughout North Britain as *strath* and *mcal*, and though they are also found in Ireland as *srath* and *mullagh*, they occur there comparatively as rarely as the *magh* and *cluain* in Scotland. *Bryn-Albyn*, the Cymric name for the great mountain range stretching across the whole of northern Scotland, seems to have long held its ground against the Gaelic form of *Drum-Alban*; and though the *pen* may be sought for in vain throughout the north and east of Alban, and when found in Argyleshire and in a few of the western islands is traceable, apparently, to a different source than the Cymric, it differs very slightly from the Gaelic *ben*, which still retains its position at the summit of nearly every mountain in the north. The *ben*, indeed, like the *inver*, is far from being unknown in Ireland, but *slieve* is the word, little used in Scotland, which generally replaces amongst the Irish Gael the *ben* and the *pen* of British topography.* Little more can be said upon the subject than that there is scarcely sufficient evidence to justify any very decided conclusion, and whilst it would be unquestionably erroneous to ascribe a Cymric origin to the Picts, the existence of a Celtic element akin to the Cymri, amongst the popu-

* The Local Index to the Four Masters (*O'Donovan*) affords the best means of testing Irish topography. The *inver* occurs in 8 instances, *srath* in 6, *beann* in 12, *mullagh* in 10, *glen* in 33, *slieve* in 45, *cluain* in 86, and *magh* in 159. According to Chalmers the Gael changed the *aber* into *inver*, an assertion singularly contrary to fact, for exactly in *Scotia* proper, the peculiar district of the "rex et episcopus Scottorum," where the *Scottish* population must have been most dense, more *abers* are found than in any other part of North Britain! Three *pens* are found on Loch Awe, in Arran, and in South Uist; four in Mull, and three in Skye, with seven *peins*, which, if identified with the Cymric *pen*, would go far to settle the question about the pre-existence of a Cymric population in this quarter; but I am indebted to Mr. Skene for pointing out that in all these instances the *pen* is derived from the "pennylands;" *e.g.*, "the pennylands of *nacross*, otherwise called *pennacross*;" "halfpenny More, otherwise called *Lephin-more*" (*Leth-pen*, half-penny). The change of *p* into *b*, or *b* into *p*, is so easy—the name, for instance, which in Low Germany is *B*aumgarten, is in High Germany *P*aumgarten—that it seems equally impossible to affirm or to deny that the *pen* has been changed into the *ben*.

lation of Alban before the arrival of the *Gwyddel Ffichti*, must remain to a certain extent an open question."*

In connection with the much vexed topic of the Pictish language, it may be as well to notice the arguments which are sometimes founded upon passages in Beda and in Adamnan's Life of St. Columba. Three Pictish words are supposed to have escaped the general deluge which is

* The Gaelic origin of the Picts was clearly proved long ago by Mr. Skene in his "History of the Highlanders," to which I am indebted, with much besides, for most of my arguments on this subject. Both Welsh and Gaelic approach the Teutonic in certain primitive words, which can scarcely have been borrowed. *Gwr* and *Fir*, *Tudd* and *Tuath*, *Llwydd* and *Leuchte*, must be surely traced to a kindred origin with *Wer*, *Theod*, and *Leod*, or *Leute*. *Gwr*, *Fir*, and *Wer*, are all connected with the Latin *Vir*, though the theory is scarcely correct which supposes *Fir* to have been imported from the Latin into Gaelic, because there are *two* words for *man* amongst the Gael, *Fir* and *Duine*, just as amongst the early Germans, and the Latins themselves—*Wer* and *Man*, *Vir* and *Homo*. The supporters of a theory which supposes a great intermixture of words derived from Latin in the Gaelic dialects are bound to show the existence of Latin influences amongst the Irish and Scottish Gael strong enough thus to alter the whole character of the language; influences which must have equally been at work at some remote period amongst the Germans, the Scandinavians, and even the Icelanders; for in the old Icelandic poems the word *Fir* is frequently used for *Man*. Greek influences, it is to be presumed, according to this theory, must have introduced *Leuchte* and *Leute* from λαοι! Such similarities simply mark an original identity of origin between certain elements in the Greek, Latin, Celtic, and Teutonic races. There is a word found, as far as I am aware, in Irish Gaelic alone, which deserves a passing notice; for it seems to point, like *Nant*, to the "dark-haired races" which once supplied the class of *Aiteach-tuatha* beneath the dominant Celts. The word is *mogh*—a slave. The word always found in the Welsh laws for a dependant is *gwas*, the old Gallic word seemingly, which appears in the Latinized laws of the Franks as *vassus*. It answers to the French *garçon*, or *garce*, of which it is probably the original—for the *gu* in French being hard, it would be pronounced like the latter—and it is still used in Welsh equivalently to *Garçon de poste*, *Garçon d'auberge*, and other similar expressions. *Gossoon* is the Irish word, the equivalent of the Scottish *Gillie;* and *garçon* has penetrated into the languages of Southern Europe, but as a foreign and imported word apparently, for in Spain, Portugal, and Italy, the *mozo*, *moço*, and *mozzo*, appear in its place in such expressions as *mozo de caballos*, *moço de navio*, and *mozzo di camera*. This word would in Gaelic be *mogh*, and it seems untraceable in the languages of Northern Europe, unless it is supposed to be akin to the Russian *moujik*. It implies dependance or inferiority in the languages of Southern Europe, like *gwas*, but in Irish invariably *slavery*, and may have passed in this sense from the language of the *aiteach-tuatha* into that spoken by their masters, the *Guladach*. So the Gaelic and Cymric word for slave—*caeth*—has passed into modern English and Scottish as *cad* and *caddie*.

believed to have overwhelmed that people and their language, *Cartoit, Scollofthes*—both somewhat questionable*—and *Peanfahel*, which is found in the following passage

* The word *Scollofth*, which occurs in the following passage, "Clerici qui Pictorum lingua Scollofthes cognominantur," is nothing more than a corruption of the Latin *scholaris*. The *Scolocs*, or *Scolloghs*, were the lowest members of the clerical order, the *clerici nativi* who are occasionally met with in the charters. Just as the leading provincial families seem to have founded and endowed abbeys, supplying from their own ranks the more dignified ecclesiastics and officials, so the place of the parish church, supported by tithes and other ecclesiastical dues, was filled, in the early Gaelic church, by the chapelry, to which was attached a plot of ground held by the service of finding chaplains. The lapse of the usual number of generations conferred "inborn" hereditary right upon the tenants of the chapel lands—the Scolocs—and as the same lapse must have removed them, whatever may have been their original descent, from that degree of connection with a Thane which in the olden time was the test of gentle birth, their "right" must have been native-right, and they were numbered amongst the Villeinage. Thus the families connected with the Abbeys, supplying the superior clergy, may be described as the Duchasach or Saor clans of the church, whilst the Scolocs, from whose ranks the chaplains were chosen, equivalents of the parochial or inferior clergy, represented the Daor clans. The Scoloc, who held the office of chaplain, acquired as a priest free-right for himself and family, though his children, like those of the merchant or "Dustyfoot," upon his death again reverted to the condition of villeinage (*Assize Will.* 28), just as amongst the Anglo-Saxons in the olden time the son of the churl-born Thegn, if he failed of acquiring Thegn-right, was numbered after his father's death amongst the Ceorlcundmen. If the Scolocs resembled the Culdees, the chaplain, after entering upon priests' orders, was bound to live apart from his wife and family. Every Scoloc-land, besides other duties, such as providing a school-house, or finding candles for the altar, was bound to supply "a clerk with cope and surplice, able to read and sing sufficiently," and from the necessity of "going to school" in order to acquire sufficient knowledge to qualify them for holding the hereditary chaplaincy, if chosen to fill the office, the tenants of the chapel-lands probably received their name of Scolocs or scholars. They were as much bound to "scholarship" as the military tenant was bound to be a "man-at-arms." The four Scoloc-lands of Ellon were reckoned in 1387 at the annual value of £15 : 13 : 4, and had once been worth £20. The annual legal value of a *Davoch* was about the same amount, and it may be perhaps conjectured, therefore, that the ordinary extent of each Scoloc-land was the quarter of a Davoch, a ploughland, or "holding." When Charlemagne enforced Christianity upon the Saxons he ordered every "parish" to contribute a "curte et duos mansos terræ" to the church; every 120 "parishioners, whether noble, free, or læt, to give a male and female slave (*Capit. Pader.* 15. *Pertz Leg.*, vol. i., p. 48). The subject of the Scolocs and "Schools" has been most ably treated in an article contributed by Mr. Joseph Robertson to the *Spalding Miscell.*, vol. 5, *Ap. to Pref.* pp. 56, 67.

of Beda. "Incipit autem (vallum) duorum ferme millium spatio a monasterio *Œbercurnig* ad occidentem, in loco qui sermone Pictorum *Peanfahel*, linguâ autem Anglorum *Penneltun* appellatur." This word is sometimes held to establish the Cymric character of the Pictish language, an inference which is more than doubtful, for if the *pean* is Cymric, the *fahel* is Gaelic, *pen-y-gwal* answering in Welsh as *ceufal* in Gaelic to "Wallsend." The place itself, which, from the addition of the *tun* to its original name, must have been for some time in the possession of the Angles, was situated on the borders of the "debateable land," and the name is exactly of that description which might be expected to be met with amongst the mixed population of such a locality; but it is as far from establishing the general Cymric character of the language spoken over the whole of the Pictish territories, as a chance word in the semi-German dialect of Alsace is from affording an example of correct Parisian French.*

In Adamnan's Life of Columba, the saint is represented as baptizing on one occasion an aged Pict of Skye named Artbran "primarius Geonis cohortis;" and on another "quidem plebeius;" after they had respectively "received the word of God through the interpreter"—"verbo Dei per interpretem recepto"—and it has therefore been concluded that Columba was ignorant of the Pictish language, which must consequently have differed essentially from Gaelic. As Mr. Skene, however, has justly remarked in his "History of the Highlanders," the interpreter is never met with except in connection with the "verbum Dei"—the Scriptures—and in his conferences with Broichan and the Druids, in his interviews with King Bruidi, when he rescued the man imperilled by the marvellous sea-monster in the Ness, and on various other occasions, Columba appears to have had no difficulty in conversing without the intervention of any such functionary, and for all ordinary purposes his Gaelic seems to have been sufficiently intelligible. The earlier monasteries, and Ireland afforded no exception to the general rule, often con-

* *Bed. Hist. Ecc.*, l. 1, c. 12. *Adamn. Vit. Col.* (*Reeves*), l. 1, c. 33, note E.

tained vast assemblages of monks, sometimes numbered by thousands, the majority of whom were probably illiterate, and incapable of reading or understanding the Scriptures written in a foreign tongue; and accordingly there was often an official whose especial business was to read the allotted portion of "the word of God," or to translate it, for the edification of his unlearned brethren, and who was generally known as "*the Interpreter.*" In Ireland the abbots were invariably "Founder's kin," and often men of high rank, whose pedigree qualified them for the abbacy, but probably with as little pretension to learning as many a Teutonic abbot of the corresponding period. There are no means of ascertaining the acquirements of Columba, but if he resembled his illustrious predecessor St. Patrick, who laments in his Confession his want of familiarity with Latin, he may not have possessed the power of rendering the Latin Scriptures fluently into Gaelic at sight, and for such a purpose he would have required the assistance of his "*Interpreter,*" such being probably the reason why this personage never appears on ordinary occasions when the Saint had to speak, or listen to, Gaelic.*

* *Adamn. Vit. Col.* (*Reeves*), l. 1, c. 33, note E; l. 2, c. 27, 32, note B, c. 33-5; l. 3, c. 14. *Bingham Ecc. Antiq.*, bk. 3, c. 13, sec. 4. The Interpres probably melted gradually into the *Fear Leiginn* or *Lector.*

APPENDIX K.

PICTS OF GALLOWAY.

THE Picts of Galloway are occasionally confounded with or included amongst the Southern Picts, though when Beda describes the latter people as dwellers beyond the Forth, at the foot of the lofty range of mountains separating them from the northern division of their race, he places them in a very different part of the country from Galloway.* Ritson maintains that Galloway was a province of the Southern Picts, laying it down, in his dogmatic manner, "as an incontrovertible fact, for which we have the express authority of Bede."† In support of this assertion he quotes *Bed. Hist. Eccl.*, l. 4, c. 26, which, unfortunately for his argument, proves exactly the contrary, as the seat of Trumwine's bishopric is there said to have been placed at Abercorn on *the Forth, which divides the territories of the Picts and the Angles*—a very long way from Galloway. Beda was very well acquainted with this latter district under the name of the diocese of Candida Casa, as it belonged, when he wrote, to the kingdom of Northumbria; and in his last chapter he commemorates the establishment of an Anglian bishop within its boundaries. As he distinctly says that the Picts, after their victory at Nectan's Mere, recovered from the Angles all that they had previously lost, it is plain that the diocese of Candida Casa, which remained in possession of the Northumbrians, could not have belonged to the Picts, but must have been conquered from another race, the Britons. The authority of Beda is quite sufficient to refute the account of Jocelin, a

* *Bed. Hist. Ecc.*, l. 3, c. 4. † *Annals of the Picts, etc.*, vol. 2, p. 244.

monk who in the twelfth century ascribed the conversion of the Picts of Galloway to a certain shadowy St. Kentigern in the seventh; this very district having been, upwards of two centuries before, the seat of a Christian bishop, the British Ninian. A still more apocryphal story occurs in the *Acta Sanctorum* (11th March), that St. Constantine of Cornwall (the contemporary of Gildas) was martyred in Kintyre about the year 570, when preaching to the heathen Galwegians and *pagan Scots;* or exactly at the same time when Columba was converting the Northern Picts from his asylum of Iona, which he received from the *Christian* King of the Dalriads! Another argument has been brought forward to place the Picts in Galloway in the days of Beda, because the venerable historian has said that St. Cuthbert, on an excursion from Melrose, was driven by stress of weather to the territory of the Picts called *Niduari*—"ad terram Pictorum qui Niduari vocantur."* "The Picts inhabiting the banks of the Nith in Dumfriesshire" say Smith and Pinkerton, "whither the holy man could not have gone in a boat,' retorts Ritson —with much truth—suggesting in his turn Long Niddry in Linlithgowshire, to reach which place, however, the holy man's boat must have been driven by stress of weather across a considerable tract of dry land! The explanation of the difficulty seems to be that Cuthbert, sailing from some point on the eastern coast, was driven northwards by contrary winds into the Firth of Tay, landing near Abernethy on the coast of Fife, the inhabitants of the banks of the *Nethy* probably being the *Picti qui Niduari vocantur.*

* *Bed. Vit. St. Cuth.*, c. 11. I am again indebted to Mr. Skene for pointing out the probability that Cuthbert crossed by the old passage (subsequently known as "Earl's Ferry") between Gulane Ness and *Newburn*, called in the old chartularies *Nithbren.* I confess that I understood "pro necessitatis causâ accidentis" in the sense that the saint's visit to the Picts was involuntary—that it had been his intention to go south, but that he was driven northwards. If the reading "quæ Niduari vocatur" is correct, *Niduari* must unquestionably apply to a *place* and not to a *people*—to Nithbren rather than to the "men of the Nethy."

Appendix L.

THE ENGLISH CLAIMS.—Part I.

An inquiry into the relations existing between the English and Scottish kingdoms in the olden time has ceased to be a matter of any but historical importance, the time being past when the forgeries of Hardyng were rewarded with a pension from an English king, and the arguments of Attwood burnt by the common hangman by order of a Scottish parliament. The feeling, however, which prompted both the forgeries and the pension, exercised an all powerful influence over the chroniclers of both nations after the question of feudal dependance had once been raised, and as the accounts of the earlier transactions between the two countries are furnished exclusively by the advocates of one side of the question, of whom it may be most truly said in the language applied by Gibbon to the writers of a different age, "their knowledge will appear gradually to increase as their means of information must have diminished," great caution is necessary in weighing the evidence which is supplied from sources so open to suspicion. The habit of forging charters after the Norman Conquest is notorious, whilst claims were frequently put forward, and often by the most sacred characters, about which it is difficult to decide whether they display the grossest ignorance or the most unblushing effrontery. A requisition to Pope Calixtus the Second from Urban, who held the See of Llandaff from 1108 to 1133, affords a fair example of the extent to which assertion could be carried in only advocating the supposed rights of a Welsh bishop; for it is maintained, exactly contrary to all known

history, that Llandaff had always been the principal Welsh See; that the ministration of the service there had never differed from that amongst the Anglo-Saxons, amongst whom the priests had been from time immemorial brought up and educated; and that from the Pontificate of Eleutherius in the second century, and after the arrival of Augustine from Rome, the bishop had invariably been a suffragan of the See of Canterbury, and a subject of the king of England!* The same class which supplied the forgers of charters and the fabricators of false claims also compiled the chronicles, and when such recklessness of assertion was considered justifiable in the requisition of a bishop, urging the claims of his diocese upon the ecclesiastical head of Christendom, what limits can be assigned to the latitude of an advocate, engaged in asserting the supposed rights of his liege lord over an alien and often hostile kingdom?

The claims grounded in the feudal era on the *chronicled* dependance of the Scots upon the Anglo-Saxon monarchy before the Conquest, may be said to rest either upon passages interpolated in a true text; actual forgeries and fabrications; or else upon amplifications and exaggerations of the truth. An instance of the first class is afforded in Simeon of Durham, according to whose authority in *Twysden*, under the date 1059, "Kinsi, Archbishop of

* *Lib. Lland.*, p. 84, 555. There is a passage in Giraldus Cambrensis, written in the early part of the thirteenth century, which clearly shows the opinion entertained at that period by no mean authority upon the relations between the two kingdoms before the capture of William by Henry II. It will be found in his Treatise "de Instructione Principum," Dist. Secund., cap. 1 (*Ang. Chris.*), and is as follows:—"Scotiam quoque, capto Rege Willelmo, suppeditavit, et Anglicanæ coronæ tam nobile præter solitum adjiciens incrementum, regni metas et terminos, a meridionali videlicet oceano usque ad boreales Orcadum insulas, egregie dilatavit; totam insulam Britanniæ, sicut oceano clauditur, in unam potenti manu concludens monarchiam. Quod a tempore quo Picti et Scoti boreales insulæ partes primum occupaverunt, *in nullo legitur authentico scripto*, post tempora Claudii Cæsaris . . . . *à quoquam factum fuisse.*" Clearly, then, all passages to the contrary which may have existed in the earlier authorities—and they have grown wonderfully since the days of Cambrensis—would have been looked upon suspiciously by impartial judges in the thirteenth century. The historian in the nineteenth should weigh such evidence well before reversing the opinion of Cambrensis.

York, Aylwin, Bishop of Durham, and Tosti, Earl of Yorkshire, conducted king Malcolm to king Edward." This passage is correctly described in *Mon. Hist. Brit.*, p. 609, as entered *on the margin of the MS.*, and as Roger Hoveden, who, at the opening of the thirteenth century, copied the whole of Simeon's chronicle word for word into his own, has omitted all notice of it, the entry—of which the object is unmistakeable—must have been added to the original MS. at a very late date, and, once incorporated with the body of the work, has been falsely stamped with the almost contemporary authority of Simeon.*

The reign of Edgar, as depicted in the Anglo-Norman chronicles, is fertile in examples of the second description. After the coronation of that king at Bath, he is said by three MSS. of the Saxon Chronicle to have sailed to Chester, where he was met by *six* kings, who all pledged themselves to be his "efen-wyrhtan," or allies by sea and by land. Æthelward, in the chronicle which he compiled for the use of his cousin, the Emperor Otho's daughter, though he alludes to Edgar's coronation in 973, takes no notice of the meeting at Chester; but in the twelfth century, and in the pages of Florence of Worcester, the coronation, which alone appears to have stimulated the poetic energy of the Anglo-Saxon bards, is completely eclipsed in importance by the subsequent progress on the Dee. *Eight* kings now meet the English monarch, rowing him submissively to the monastery of St. John, and upon his return to his palace, Edgar turns to his nobles, with the remark that none of his successors ought to vaunt himself king of the Angles until he had enjoyed a similar triumph! It is easier to understand the process

* A similar instance occurs in the Conqueror's laws, in the "Ancient Laws," etc. (Thorpe). It is as follows:—"Statuimus . . . . pacem et securitatem et concordiam, judicium et justiciam inter Anglos et Normannos, *Francos et Britones Walliæ et Cornubiæ, Pictos et Scotos Albaniæ, similiter inter Francos et insulanos*," etc. (*Leg. Will. Conq.* III. 1). Of all the portion in Italics, Hoveden, who gives these laws *ad an.* 1180, was totally ignorant—and probably the Conqueror also. The words in sec. 2 after "regnum Angliæ (*quod olim vocabatur regnum Britanniæ*)" are also an insertion, equally ignored by Hoveden.

by which the *six* kings grew into *eight*, with Kenneth of Scotland in the van, than to account for the silence of the contemporary Æthelward, and of every Saxon chronicler before the Conquest, about a triumph to which Edgar himself is supposed to have attached so much importance.*

In his anxiety to render his narrative as circumstantial as possible, the original framer of the story has committed the error of *naming* the eight kings—Kenneth, king of Scotland, Malcolm, king of the Cumbrians, Maccus king of the Isles, and Duffnal, Siferth, Howel, Jacob, and Jukill—thus laying himself open to be convicted of inaccuracy. There could have been no "king of the Cumbrians" at this time, for the grant of *Cumbra-land*, made to Malcolm the First in 945, and for which he renewed his oaths upon the accession of Edred, ceased upon the death of the Scottish king, and the feudal subinfeudation of that province as a fief held by the Scottish Tanist is totally contrary to the real history of the period. Donald, son of the Eogan who appears to have fallen at Brunanburgh, was king of Strath-Clyde during the whole of Edgar's reign, dying in the same year as the English king, whilst on a pilgrimage to Rome;† and if the "rex Cumbrorum" means "king of Strath-Clyde," no *Malcolm* could have appeared at Chester in that capacity. Malcolm, king of the Cumbrians, is indubitably a *myth*. Of the other five kings, Siferth, Howel, and Jacob are unquestionably meant for Jevaf ap Idwal, his son Howel, and his brother Iago, princes of North Wales,

* *Chron. Sax.* 972. *Æthel.*, l. 4, c. 9. *Flor. Wig.* 973. The MSS. of the *Chron.* give the wrong year, so that the entry was scarcely by a contemporary hand. The meeting of the "*Ship-force*" at Chester had probably reference to *Ireland* rather than Scotland. Edgar undoubtedly coined money at Dublin, the capital of the Irish Norsemen, but there is not a trace in the Chronicles of either country of any conquests achieved by that king in Ireland. In later days the Irish Norsemen, holding apart from the native Gael, attached themselves to the kings and church of England, and as Edgar in his laws extols the fidelity of the Anglo-Danes, it is not improbable that their kindred in Ireland, when hard pressed by the native Irish, may have acknowledged the authority of the English sovereign in the hope of obtaining his support.

† *Tigh.* 975. *An. Ult.* 974. *Brut y Tywys* 974.

and Jukill, or Juthael, may be intended for another of the same race, Idwal ap Idwal. Five years before the meeting at Chester, Jevaf was imprisoned, blinded, and hanged by his brother Iago, and could scarcely have been in a condition to "grace the triumph on the Dee."* The name of Duffnal was utterly unknown amongst the contemporary princes of the Welsh, and is only applicable to the king of Strath-Clyde, adding another element to the confusion. This is scarcely the handiwork of a contemporary chronicler.

The five princes of the Welsh, however, had not yet played their part, for subsequently to the earliest edition of the progress on the Dee it became the object of the king of England to assert the dependance of the lords of Galloway upon his crown, and accordingly it will scarcely excite surprise to find that province enumerated amongst the "kingdoms" which Roger of Wendover was the first to attach to their names.† His selection, however, was most unfortunate, for to Duffnal he has given South Wales, the undoubted appanage of Owen, or his son Einion, of the family of Howel Dha, whilst for Galloway he has chosen Iago, as unquestionably a prince of North Wales. With his donation of Westmoreland to Jukill I need hardly interfere.

Two charters are connected with the supposed occurrences of this period, both of which have been condemned as spurious by Mr. Kemble.‡ The first was evidently intended to pass for a donation made at Edgar's coronation, for it is witnessed by the eight kings "at Bath in the Feast of Pentecost," but dated unluckily in 966, five years before Kenneth could sign himself "Rex Scotorum," or Edgar was crowned at "the city of sick men!" The second is framed far more skilfully, but bears evident marks of the Norman era of its composition, and some

* *Brut y Tywys* 967. *An. Camb.* The names of the other princes are continually occurring in these Annals. Siferth and Jacob appear amongst the witnesses to an authentic charter of Eadred in 955. (*Cod. Dip.* 433.)

† *Rog. Wend.* vol. 1, p. 415.

‡ *Cod. Dip.*, Nos. 519, 567, also vol. 1, *Introd.* p. xliii. xliv.

circumstances connected with it are especially worthy of notice. Malmesbury in his Antiquities of Glastonbury mentions certain privileges and grants made to the monastery by Edgar, and the text goes on thus, "Hoc donum, ne instabile vel inglorium sit, lituo eburneo, quem linibus auri prætexebat, super altare dato confirmavit. *Dedit etiam aliud privilegium in hæc verba*—(here follows the charter in question, concluding) *Acta est hæc privelegii pagina et confirmata apud Londonium . . . . anno* 971 *indictione* 14 . . . . Ad supplementum vero securitatis ne tanta liberalitas nutaret, Johanne . . . . Papa persuaso, donum suum Apostolico suffulsit edicto, cujus hæc est series. Noverit cunctorum, etc. . . . . Actum tempore Egelwardi, ejusdem monasterii Abbatis, hoc Apostolicum decretum anno 965."* In other words, a charter dated in 971 and attested amongst other witnesses by Abbot Sigegar, was *confirmed* by the Pope in 965 in the time of Sigegar's predecessor Abbot Aylward! The interpolation is unmistakeable; but by omitting the words in Italics, the sense is restored as Malmesbury wrote it, Edgar's original gift, attested by placing the ivory horn on the altar, having been confirmed by the Pope in 965. The same interpolation is traceable in nearly every MS. of the *Gesta Regum*, in which this identical charter reappears, to be invariably confirmed by the Pope five years before it was granted by the King![†] It would be unjust to attribute this questionable transaction to Malmesbury. In his *Gesta Regum* he writes thus, "Arturis sepulchrum nusquam visitur unde antiquitas næniarum adhuc eum venturum fabulatur:" and again, in a passage copied from his Antiquities of Glastonbury, "Illud quod clam pene omnibus est, libenter

* *Antiq. Glast.* (*Gale and Fell*, vol. 3, p. 319, *et seq.*)

† *Gesta Regum*, l. 2, sec. 149 to 151. The text at present stands thus, "Privelegium . . . . sicut in antiqua scedula legi, non est absurdum inserere." Then follows the charter, concluding thus, "Hanc privilegii paginam Eadgarus *duodecimo* anno regni sui . . . . confirmavit. Eodemque anno qui fuit 965," etc. In sec. 153 he is supposed to write of another charter of Edgar "anno 974, regni vero mei *quartodecimo*." I cannot attribute to Malmesbury the absurdity of describing, in sec. 150, 965 as the *twelfth* year of Edgar's reign, and in sec. 153, 974 as the *fourteenth!*

prædicarem, si veritatem exculpere possem, quid illæ pyramides sibi velint quæ . . . . cimeterium monachorum prætexant:" yet in the same Antiquities some one has not hesitated to interpolate the following, "prætermitto de Arturo, inclyto rege Britonum, in cimeterio monachorum inter duas Pyramides cum sua conjuge tumulato!" The body of Arthur was *discovered*, according to Wendover, in 1191, and the hand of Malmesbury had long been mouldering in the grave when this passage, and the charter, of which he was equally ignorant, were inserted by some unscrupulous fabricator in his works.*

Another fabrication which has been inserted amongst the events of this reign, is the cession of Lothian to Kenneth of Scotland, to be held of the English crown as a hereditary feudal fief. This first appears in the pages generally attributed to John of Wallingford, who filled the office of abbot of St. Albans—the same monastery in whose chronicles "the five Kings" first appear with kingdoms—from 1195 to 1214; though they would appear rather to have been the work of another John of Wallingford who died in 1258. According to this authority, on the death of Osulf, unwilling that any part of Northumbria should pass hereditarily, Edgar created an earldom for Oslac, extending from Humber to Tees, and erected the *sea-coast of Deira*, reaching from Tees to *Mireforth*,—meaning probably the Firth of Forth—into another earldom for Eadulf Ewelchild, which must have interfered considerably with the grant to Oslac. Lothian, always open to the incursions of the Picts and Scots, was little cared for by the English kings, and Kenneth, hearing of the liberality of Edgar, and hoping to profit by it, was conducted to the English court by the two earls and Elfsi, bishop of Durham—a proceeding not a little suggestive of the marginal addition to Simeon of Durham, to which allusion has been already made. Arrived there, Kenneth suggests to Edgar that this neglected Lothian

* *Gesta Regum*, l. 1, sec. 21; l. 3, sec. 287. *Antiq. Glast.* (*Gale and Fell*, vol. 3, p. 306). The body of Arthur was *discovered* in the time of Cambrensis. *De Instruc. Princ.* (*Ang Chris.*), Ap. ix.

had always belonged of hereditary right to the kings of Scotland, a claim which Edgar refers to his council, who assent to it, with the reservation that it was always held by homage, assigning as a reason that it was a worthless province, and difficult of access to defend. Kenneth accordingly consents to hold Lothian as a fief "sub nomine homagii . . . . sicque determinata vetus querela de Louthion, et adhuc nova sæpe intentatur."*

It is scarcely necessary to remark about a tale so redolent of the age in which it was first put forth, that it will not be found in a single authority of an earlier date than the thirteenth century. Every chronicler before that epoch, Norman as well as Saxon, was ignorant of "the old quarrel about Lothian," yet it is strange that Æthelward, at least, should not have celebrated its cession during his kinsman's reign, in some of those unpolished periods that excited the contemptuous pity of the fastidious Malmesbury. Simeon, the best authority for Northumbrian history, writing a hundred years and upwards before Wallingford, tells how Lothian was ceded to the Scots through the pusillanimity of Eadulf Cudel in the days of Canute, ignorant alike of the previous cession to Kenneth and of the existence of "the old quarrel" in the time of Edgar. Yet Simeon's earls—Osulf, Oslac, Waltheof, Uchtred—are historical characters whose names appear in authentic charters; "Oslac Eorl with the

* *Wallingford* (*Gale and Fell*, vol. 3, p. 544). *Mon. Hist. Brit.*, p. 22, note E. No sense can in reality be extracted from this passage, for even supposing *Deira* to be a mistake for *Bernicia*, and explaining *Mireforth* to mean the Firth of Forth, the sea-coast from Tees to Forth must have of course *included* Lothian. The accuracy of this writer in matters of history may be tested by his account of Northumbrian affairs during the reign of Athelstan (p. 540). He uses some expressions, however, which are worthy of the notice of English historians, considering the time at which they were written —some period of the great struggle between John and Henry III. against their barons. "Osulf jam mortuo, noluit *sub nomine hereditatis* Rex eam partem terræ alicui provenire . . . . . sicque duo regna ad duos comitatus devenerant, permanserantque omni tempore Regum Anglorum *sub ditione et donatione eorundem*." Evidently he was a strenuous assertor of the prerogatives of the crown. His assertion is incorrect as far as relates to Northumbria beyond the Tyne, which was always held by a member of the old race, *i.e.*, *hereditarily*, confirmed by the Anglo-Saxon king.

Here dwelling in the Eorldordom" is mentioned in the laws of Edgar, but the name of his companion in the pages of Wallingford, Eadulf Ewelchild, is never found except in two spurious charters—once in the appropriate company of another *myth*, Malcolm Dux—and in fact is nothing else than a blundering attempt at adapting the real ceder of Lothian, *Child Eadulf Cudel*, to the time of Edgar as *Eadulf Ewel-child*.* Wendover has improved upon the account attributed to his abbot, mentioning the conditions on which Lothian was to be held. Kenneth and his successors were to attend the court of the English kings on every solemn festival when the latter "wore the crown," and *mansiones* were assigned for the support of the Scottish train on these continual progresses, which remained in the possession of the Scottish kings until the reign of Henry the Second. The addition of Wendover, with the *mansiones* held to the days of the second Henry, was purposely framed to correspond with the supposed cession of Lothian, which the same chronicler has added to the fiefs surrendered by Malcolm IV. to the English king in 1157; a cession which has not only been overlooked by every contemporary authority, but was also totally ignored by the English kings themselves, who showed an unaccountable negligence in exercising the right, which they would unquestionably have acquired by such an act, of summoning the baronage of the Lothians to perform the military service due to their English overlord.†

Passages of the third description—amplifications and exaggerations of the truth—are occasionally more difficult to deal with. The events of some of the most interesting periods of Anglo-Saxon history were principally preserved in ballads, traditions, or legends, and too much stress should not be laid upon the minute accuracy of accounts handed down through the medium of such authorities, whose expressions, when they exalt the prowess or power

* *Sim. Dun.* (*Twysden*), 1072 and p. 81. *Leg. Edg. Sup.*, 15. *Cod. Dip. Sax. Æv.* Nos. 563, 598.

† *Rog. Wend.*, vol. 1, p. 416; vol. 2, p. 286. The latter passage has been interpolated in *Diceto*, *vide* pt. 2.

of their favourite heroes, are apt, however they may have suffered in elegance, to gain rather than lose in force in the Latin form under which they appear in later chroniclers. Results alone can test their truth, and where fairly judged they will generally be found very accurate where no special end was to be gained by an opposite course. There is no difficulty, however, in ascertaining the real course pursued by the Anglo-Saxon kings whenever a prince of alien race submitted to their authority, Welsh history affording abundant examples, though it will be unnecessary to ascend higher than the reign of Alfred.

All the princes of the southern Welsh sought the protection of Alfred against the encroachments either of the northern princes or of the Mercians; and after the successful resistance of the great king to the Danes, Anarawd of North Wales submitted, and was placed on a similar footing with the semi-independent Mercian Ealdorman. But it was Athelstan who first settled the tribute to be paid regularly by the leading Welsh princes, a tribute which was fully acknowledged in the Welsh laws attributed to Howel "the Rich;" and it is in the charters of the founder of the English monarchy that they make their earliest appearance as attesting "Subreguli," whilst their bishops became, and still remain, suffragans of the Archbishop of Canterbury.* What then were the practical results of the subjection of Wales to the Anglo-Saxon monarchy? Her princes paid tribute to the English king, giving hostages for their fidelity, and occasionally attending the court of their overlord, and subscribing his charters as "Subreguli;" her prelates, consecrated by an English Metropolitan, received the pastoral staff from the English king; and her people, numbered amongst the subjects of the Anglo-Saxon crown, were included in Edgar's laws amongst the "Angles, Danes, or Britons, on every side of my dominion."† No tribute was ever levied since the

* *Asser.* (*Mon. Hist. Brit.*, p. 488). *Malm. Gesta Regum*, l. 2, sec. 124. *Cod. Dip.*, 353, 363, 364.

† *Cod. Dip.* 411, 426, 433, 451. *Leg. Edg. Sup.* 2. "Propugnator Brettonum" is the title generally used in these charters, the Welsh *Reguli* appearing in No. 451 on the same

days of Oswy and Egfred upon the Scottish people, no authentic charter attests the presence of a Scottish king at the English court to subscribe his name amongst the attendant Subreguli, and no Culdee prelate acknowledged the supremacy of the metropolitan either of York or Canterbury—and unless practical results of this description can be shown to have ensued, no passage in a chronicle, however reiterated or exaggerated in the pages of subsequent writers, will prove the dependance of the Scottish kingdom upon an Anglo-Saxon overlord.

It is unnecessary to enter upon the *Bretwalda* controversy, for, granting the theory in its fullest extent, the tribes beyond the Forth would scarcely have paid a deference to the *Romanesque* authority, supposed to have been first vested in a petty Sussex *Heretoga*, which they had invariably refused to the Imperial Lieutenants. The power of Oswy was based upon a very different foundation: it was won by the sword and lost by the sword; a veritable conquest as far as it extended, entailing a foreign bishop and foreign tax-gatherers, both bishop and *Gerefas* flying after the battle of Nectan's Mere, and never more exercising jurisdiction or exacting *Gafol* beyond the Forth. No claim is again put forward to any authority over the Scots until a passage, occurring in two MSS. of the Saxon Chronicle, represents Constantine II. as tendering a voluntary submission to the elder Edward at Bakewell in the Peak, in the last year of that sovereign's reign. It is as follows—"He went thence into Peac-lond, to Badecan-well, and commanded a *Burh* to be built nigh thereunto and manned. And then chose him to father

footing as the Atheling Edgar, also styled *Regulus*. Though such titles as "Cyning et Casere totius Britanniæ," and "Rex totius Albionis" are met with, no authentic charter ever claims actual sovereignty over the Scots. The position of the Welsh princes just before the Conquest will be best appreciated from the following extract from the *Chron. Sax. ad an.* 1064. Griffin, "king over all the Welsh nation," was slain, and his head brought to Earl Harold, who sent it to the king, and "King Edward committed the land to his two brothers, who swore oaths and gave hostages to the king and to the earl, that they would be faithful to him in all things, ready to aid him by water and by land, and would pay such tribute from the land as was paid before to other kings."

and lord the king of Scots, and the whole nation of the Scots, and Ragnald and Eadulf's son, and all those who dwell in Northumbria, as well English as Danes and Northmen, and others. And also the king of the Strath-Clyde Wealh and all the Strath-Clyde Wealh."*

How far does this passage agree with the true history of the period as far as that can be ascertained? Alfred's rule never extended over the Danes. When Guthrum and his *Here* "gave hostages, and swore with many oaths that they would leave his *kingdom*," the agreement was fulfilled by their departure from Chippenham, in *Wessex*, to Cirencester in *Mercia*—across the Thames—and though Alfred's kingdom was subsequently enlarged, at his death he only ruled over all "Angel-cyn, except that part under the Danes." The earlier years of Edward were passed in frequent struggles against the same people, nor was it until within a few years of his death that the Danes of Mercia and East Anglia "sought him as lord"—the Southumbrian Danes, in other words, for all the early authorities agree that Athelstan was the first king who united Angles, Danes, and Britons, under one sceptre. "In uno solidantur Britannidis arva," wrote Æthelward, profoundly ignorant of the passage which now appears in the Saxon Chronicle attributing this union to Edward; an ignorance in which the author of the old poem to which Malmesbury alludes also shared, when he described the Northumbrian Sitric as one "qui antecessorum regum potentiam rugatis naribus derisissit." The contempt of the Northumbrian Danes for the authority of Athelstan's ancestors is scarcely consistent with their voluntary submission to his father in the preceding year. The ignorance of the earlier authorities about this passage is justified by the authentic charters of the reign of Athelstan, in which the names of the Danish Eorls occur for the first time amongst the attesting witnesses. It was not till after Sitric's death in 927 that the submission of the *Northumbrian* Danes to an Anglo-Saxon king was first brought about, Athelstan possessing

* *Chron. Sax.* 924. The two MSS. are the *Benet* and the *Cottonian* of Wheloc, now lost.

himself of the kingdom of his sister's husband, and defeating all the attempts of Godfrey, the survivor of Ivar's grandsons, to establish himself in the territories of his brothers.*

But not only is the passage inconsistent with the history of the period as it appears to have been known to the earlier authorities of the tenth century; it contains internal evidence of its untruth. That such acts of submission were made upon a frontier is a fact notorious from all the tenor of contemporary history; and when Edward received the submission of the Southumbrian Danes, the *Eorls*, the *Holds*, and the *Here*, tendered their allegiance each in their respective neighbourhood, a course rendered still more imperative from their tendering it in a body, according to the older form of *Leudisamium*. Every Danish Freeman swore *personally* to be true to his Anglo-Saxon "Hlaford and Mundbora," and the oath was of course taken at some neighbouring place at which every Freeholder could attend.† The words which Simeon and Florence place in the mouth of Malcom Ceanmore show that, in the opinion of that age, no Scottish king had ever met an Anglo-Saxon sovereign except upon their mutual frontiers,‡ and all authentic history proves such meetings to have invariably been the result of a march to the north. But Bakewell in the Peak is hardly upon the Scottish, nor even upon the Northumbrian frontiers, and the construction of a *Burh* in the north of Derbyshire would have scarcely brought the Danes to terms; much less would it have gathered the whole free population of Scotland, Northumbria and Strath-Clyde, around their respective leaders, to take the oaths of fealty at such a distance from their homes, and to place themselves within the *socn* of the English king!

Nor is this all. Three years before his supposed appearance at Bakewell, Reginald Hy Ivar was in his

* *Chron. Sax.* 878, 879, 926. *Ethelw.*, l. 4, c. 5. *Malm. Gesta Regum*, l. 2, sec. 134. *Cod. Dip.*, 353, 363.

† *Chron. Sax.* 918, 921, 922. So also Athelstan received the submission of the northern Welsh at Hereford, and of the Cornishmen at Exeter. *Malm.* as above.

‡ *Sim. Dun. de Gestis.* and *Flor. Wig.* 1092.

grave. The Irish Annals, at this period most accurate and trustworthy authorities in all connected with the Hy Ivar family, place his death in 921.* Undoubtedly the English chronology of this era is hopelessly confused, and Florence places these events under that year; but if his date is preferred, the three last and most important years of Edward's reign are left a blank, and the authority of the best and oldest MSS. of the Chronicle must be impugned. I cannot think that this is necessary. Edward built a *Burh* at Bakewell in the last year of his reign, and the chronicler faithfully recorded it as his latest act; but of the vast assemblage of all Scotland, Northumbria, and Strath-Clyde, which gathered around that place to tender allegiance to Edward as their overlord, both king and chronicler were equally ignorant.

No period of Anglo-Saxon history was more glorious, or is less known, than the reign of Athelstan; a few simple notices in the Saxon Chronicle, and the old poem which Malmesbury somewhat contemptuously follows, alone remaining, with the exception of the great king's Laws, to throw a scanty light upon the events of this epoch, though later writers have not scrupled to supply the deficiency. Much confusion also has arisen, occasionally perhaps unintentionally, between the Scots and Northumbrian Danes, but it may be generally rectified by observing the invariable practice, not confined to England, of enforcing a renunciation of idolatry upon the followers of Thor and Odin whenever they submitted to a Christian prince; a condition which it is almost unnecessary to point out as totally inapplicable to the Christian Scots. A passage of this description occurs in one MS. of the Saxon Chronicle at the very outset of the reign of Athelstan. It is as follows: "And Sihtric perished: and king Athelstan obtained the kingdom of the Northumbrians. *And he ruled all the kings who were in this island; first Howel king of the West Welsh, and Constantine king of Scots, and Owen king of Gwent, and Ealdred Eadulf's son from Bamborough.* And they confirmed the peace with pledges

* *An. Ult.* 920.

and oaths at the place which is called Eamotum on the 4th of the Ides of July; and they renounced all idolatry, and after that submitted to him in peace."* That upon the accession of Athelstan to the kingdom of the Northumbrians, four Christian princes should meet from different quarters to renounce idolatry, and to confirm "the *Frith*" which they had not yet broken, seems scarcely compatible with common sense; but by omitting the words in Italics the true meaning of the passage is at once restored as it was entered originally in the Chronicle. The Danes of Northumbria "confirmed the *Frith*"—an expression continually occurring with reference to that people—renounced idolatry, and submitted in peace to the rule of their new king. The rest is an interpolation, incorporated somewhat clumsily in the Chronicle.

A similar inaccuracy is traceable in the account taken by Malmesbury from the old poem, representing Constantine and Eogan of Strath Clyde as meeting Athelstan at Dacor, and surrendering themselves and their kingdoms into the hands of the English king, who orders a son of the Scottish king to be baptized, himself standing sponsor on the occasion. As neither Constantine nor Eogan ever appear in the character of *Subreguli*, the first part of the story may be dismissed as an exaggeration, the supposed paganism of the former throwing great suspicion upon the remainder. That there was a negotiation between the kings on the subject of Godfrey Hy Ivar is highly probable; but as Constantine had assisted the Northumbrian Angles against this very Godfrey and his brother Reginald only a few years before, it is hardly possible that he should have chosen the moment when Godfrey was driven from his brother's kingdom, to support, against his former allies, pretensions which he previously opposed. It was his connection with Olave Sitricson, his own son-in-law, that first placed Constantine in the ranks of Athelstan's enemies. For the remaining events of this reign the scanty records of the period have been exaggerated until an expedition in which Athelstan reached Forteviot and "over-harried

* *Chron. Sax.* 926.

much," whilst his fleet swept the coast to Caithness, has been magnified into a complete subjugation of the whole of Scotland, one authority detaining Athelstan three years in the country, whilst he busied himself in placing princes over her provinces, provosts over her *cities*, and in settling the tribute payable from the most distant islands!* Yet even the real and substantial victory of Brunanburgh brought no Scottish king to the court of Athelstan to attest his charters as a *Subregulus*. It only confirmed his authority for the time over the Northumbrian Danes.

Edmund's cession of Cumberland to Malcolm I. as a *Læn* was the cause, and the result, of the first authenticated meeting between an Anglo-Saxon and a Scottish king. It was made over on the frontier, and it was upon the frontier again that, after the assassination of Edmund, the Scots renewed their oaths to his successor Edred. The grant lapsed upon the death of Malcolm, and was never renewed; and as no more mention is ever made of "the Scottish oaths," they must have been given in relation to this grant of Cumberland, the withdrawal of the *Læn* from Malcolm's successor Indulf affording, perhaps, a reason for that king's invasion of the Lothians and capture of Edinburgh. It is scarcely necessary to point out the usual confusion between Scots and Danes in the account of Malmesbury that the former "chose Eric for their king," and suffered accordingly with the Danes.†

Edgar's reign has been already noticed, and the Scots are not again mentioned, even by the Anglo-Norman chroniclers, before the reign of Canute, who is said by three MSS. of the Saxon Chronicle to have marched to the north on his return from Rome in 1031, when Malcolm II. "became his man, but only held that allegiance a little while." Lothian had by this time been annexed to the Scottish dominions, either by actual conquest or by the cession of Eadulf Cudel—a cession which stands out in strong contrast to the idea of the Anglo-Saxon monarchy which the later chroniclers and their followers

* *Doc. Illust. Hist. Scot.* xxxiii. † *Chron. Sax.* 945-6. *Malm. Gesta Regum*, l. 2, sec. 146. Compare vol. 1, c. 3, p. 63, and note.

would wish to convey. Who ever heard of two feudatories annexing, or resigning, territories without the permission of their overlord? Canute's expedition may have had some reference to this curtailment of the northern frontier, and though it seems to have been misdated four years, there is no reason to question the reality of its occurrence; but the characteristic omission in the two later MSS. of the passage, "he held that allegiance only a little while," and their insertion of the names of two other kings, Mælbeth and Jehmarc, render their authority somewhat suspicious. Macbeth at this time was not even Mormaor of Moray.*

Under the year 1054 the chronicle contains two separate accounts of the expedition of Earl Siward, in which he defeated Macbeth and returned with enormous booty. Such were the only results, according to the contemporary chronicler, of an expedition which appears to have been directed against Macbeth on account of the protection he had afforded to the Norman favourites of the Confessor. Tighernach, the contemporary Irish annalist, alludes to this defeat of Macbeth under the same year; and four years later, in 1058, he notices an abortive attempt of the Norwegians, which is also entered in the Saxon Chronicle under the same date, placing the defeat and death of Macbeth, which raised Malcolm Ceanmore to the throne, in the same year. In later chroniclers the events of both these years have been purposely confounded, and Siward has been, for obvious reasons, represented as defeating and killing Macbeth, and restoring Malcolm to his father's throne at the command of the English king—all which, as he died in 1055, he must have risen from his grave (like Reginald Hy Ivar) to effect. That the defeat of Macbeth in 1054 contributed eventually to the success of Malcolm in 1058 is highly probable; but the misrepresentations of the Anglo-Norman writers cannot stand for a moment against the account of the contemporary and more impartial authorities.†

* *Chron. Sax.* 1031. According to the contemporary Wippo, Canute was at Rome in 1027. *Vide Mon. Hist. Brit.* ad. loc.

† *Chron. Sax.* 1054, 1058. *Tigh.* 1054, 1058.

THE ENGLISH CLAIMS.—PART II.

THE earliest connection between a king of Scotland and one of the Norman line of English kings, was brought about through the reception and encouragement afforded to Edgar Atheling and his supporters by his sister's husband, Malcolm Ceanmore. Uneasy at the favour shown to the Saxon exiles William marched to the north, and at a meeting at Abernethy, beyond the Forth, Malcolm "became his man," giving up his son Duncan as a hostage for the fulfilment of the engagements then contracted. Some light is thrown upon the nature of these engagements by the subsequent transactions between Malcolm and Rufus, for nineteen years after the treaty of Abernethy, when Robert and Edgar arranged a peace between the hostile kings, it was agreed, "ut Willielmo, sicut patri suo obedivit, Malcolmus obediret, et Malcolmo xii. villas, quas in Anglia sub patre illius habuerat, Willielmus redderet, et xii. marcas auri singulis annis daret."* Nearly two years, however, were suffered to elapse without any steps being taken by William to carry out this arrangement, until a severe illness induced him to yield to the suggestions of his nobles, who were anxious to re-establish a firm peace between the two countries; and accordingly, on the arrival of an embassy from Malcolm, a meeting was proposed at Gloucester. On the arrival of Malcolm, however, who had been conducted to the place of meeting with all due honour by Edgar Atheling, Rufus, now recovered from his illness, refused to hold any communication with him, referring him to the judgment of the English barons alone—"insuper etiam illum, ut secundum judicium *tantum* baronum suorum in curia sua rectitudinem ei faceret, constringere voluit"—a course to which Malcolm refused to submit, objecting "to do right" to the English king except by the judgment of the Peers of *both*

* *Sim. Dun. Flor. Wig. Chron. Sax., ad an.* 1091.

realms, and upon the frontiers of the two kingdoms.* Hence it may be gathered that Malcolm had received a grant of manors, and a yearly subsidy, in return for his homage at Abernethy; and as he was willing to renew his homage on the same conditions—to *obey* William as he had *obeyed* his father—whilst he resented the demand of Rufus by a declaration of war, it is evident that this demand must have been an innovation upon the original agreement. Had Malcolm become the liegeman of the Conqueror at Abernethy for the kingdom of Scotland, he would have held it from that time forward as a fief of the English crown, and there could have been no reasonable objection against his "doing right" in the court of his overlord, and according to the judgment of "his Peers," the English barons, as his tenure would have been exactly similar to

* *S. Dun. F. Wig. Chr. Sax., ad an.* 1093. Compare vol. I, c. 6, p. 145, note. Certain inferences are sometimes drawn from the expression *rectitudinem facere*, "to do right,"—though it is always dangerous to lay too much stress upon the strict and exact *legal* meaning of every word employed by a chronicler—and it is implied that "right" could only be "done" by "a vassal to his superior," and that therefore Malcolm was William's vassal—*for the kingdom of Scotland*. The simple answer to this is, that not an acre of land could be held under the feudal system by "noble tenure," except by homage, or vassalage, the extent of the vassalage being identical with the extent of the fief, and not necessarily implying the entire dependance of the holder upon the overlord of the fief. He might hold *other fiefs* of innumerable other overlords. Thus in a treaty of peace between Phillip Augustus and Richard, the latter agrees "ut ipse faciet Regi Franciæ *servitia et justicias in curia Regis Franciæ* de singulis feodis quos ab eo tenet" (*Fœd.*, vol. I, pt. I, p. 61); so that the English king was ready "to do service and 'right' in the French king's court" for every fief he held of him, without in the least implying the subjection of the English crown to the French. *Rectitudo* simply means "a right," and when Prince Alexander performed homage to John "pro omnibus *rectitudinibus*, etc.," and when Richard, by his Charter of Privileges, confirmed to William "omnes libertates et *rectitudines*, etc.," the "rights" were claimed of the English crown, and in the latter case settled, "secundum quod recognoscetur a quatuor proceribus nostris . . . . . et a quatuor proceribus illius," exactly as Malcolm claimed on this occasion. He was ready to "do his right," to fulfil his obligations, to "obey William as he had obeyed his father" probably—for how else could he have hoped to obtain the manors and the subsidy?—but if a question was to be raised about the right, it was to be decided, not "secundum judicium *tantum* baronum . . . . in curia (Willielmi)," but "secundum judicium primatum *utriusque* regni," and on the frontiers—not in William's court. (*Doc. Illust. Hist. Scot.*, xl., sec. 19. *Fœd.*, vol. I, pt. I, pp. 50, 62.)

theirs. Nor must it be forgotten that it was Malcolm, and not William, who sought for the re-establishment of the Conqueror's arrangement, a most inexplicable line of conduct if it is to be assumed that the Scottish king was eager to lay the independence of his kingdom at the feet of the English monarch, but perfectly intelligible on the supposition that Malcolm was anxious for a renewal of his "subsidy," which Rufus was unwilling to grant without a further acknowledgment of dependance.

No mention is to be found in the chronicles of the specific terms imposed upon Duncan and Edgar in return for the assistance which replaced them upon their father's throne, though to judge from the character of Rufus, and his conduct towards Malcolm at Gloucester, he would have scarcely afforded such support without a corresponding equivalent, and both these kings probably acknowledged some sort of dependance upon their patron. Alexander was differently situated, for Henry never appears to have pressed any claims upon the kingdom of his wife's brothers, one of whom was also his son-in-law. The struggle of Alexander was against the encroachments of the English Church, and the tenacity with which he opposed everything that could "in any way derogate from the liberty or dignity of the Scottish kingdom"* marks the manner in which he would have met any encroachments upon the independence of his crown. His successor David was an English baron, and, as such, was the first to swear allegiance to his niece Matilda in the great council held at London in 1126; and had Alexander been the liegeman of Henry for his kingdom, most assuredly would he have been present at Salisbury ten years earlier, when, "Conventio optimatum et baronum totius Angliæ apud Saresberiam facta est. Qui in præsentia regis Henrici homagium filio suo Willielmo fecerunt, et fidelitatem juraverunt."† The absence of the elder brother, who held no lands in England, from the earlier council, and the presence of the younger, who held the Honor of Huntingdon, at the later, distinctly mark that the homage must have been performed

* *Ead. Hist. Nov.*, l. 6. † *Sim. Dun.* 1116.

for fiefs in England. When there were no fiefs held, no homage was required.

By the Convention of Falaise, "William, king of Scots, became the liegeman of his lord the king of England, against all men, *for Scotland, and for all his other lands*, and performed fealty to him as to his liege lord, as all the other lieges of the king were accustomed to do; and also to king Henry the son, saving his fealty to king Henry the father."* All the king of Scotland's lieges, whether clergy or laity, became in consequence the liegemen of the English king; English garrisons, paid out of the Scottish revenue, were to be introduced into five of the principal Scottish castles; and all English fugitives for felony were to be captured by the king of Scots, and given over to English justice (unless they were ready of their own will "to stand to right" in the English court); whilst Scottish fugitives might, if they chose, "stand to right" in the English court. In consequence of this arrangement, William, his earls, and his barons, were frequent attendants as vassals "in the court of their lord the king of England," to whose decision the Scottish king was obliged to submit in his contest about the see of St. Andrews, and whose license he was obliged to obtain before repressing the disturbances in Galloway. Such were some of the immediate consequences of "homage for the kingdom of Scotland."

By the charter given by Richard to William at Canterbury, Roxburgh, and Berwick, the remaining castles occupied by English garrisons, were restored to William as his absolute and inalienable property, all the stipulations which Henry "per novas chartas et per captionem suam extorsit" were declared null and void, and the relations between the two kingdoms were to be re-established on the same footing as in the reign of Malcolm IV., all claims being settled according to the decision of four English nobles to be named by William, and four Scottish nobles to be chosen by Richard. All the lands held by Malcolm in the county of Huntingdon, and elsewhere,

* *Fœd.*, vol. 1, pt. 1, p. 30.

were to be held on the same tenure by William; the allegiance sworn to Henry by William's vassals was resigned and given back; and William then became the liegeman of Richard "for all the lands for which his predecessors had been liegemen of the English kings."* As by the restoration of the allegiance of the vassals of the Scottish crown to their native sovereign the relations between the two kingdoms were restored to "their original footing," and as it is clearly shown by this charter that liege homage for Scotland, and its consequences—the rights and prerogatives of an overlord which were exercised by Henry—had been extorted from William "per novas chartas et captionem suam," such "original footing" must have been that of independence. As in the reign of Malcolm the allegiance of the Scots was due to their native sovereign alone, that sovereign could have acknowledged no overlord of the lands for which they rendered it; and as Malcolm was "homo regis Angliæ eo modo quo avus suus fuerat homo veteris Henrici," it follows necessarily that the homage rendered by Malcolm and David to the kings of England could not have been homage for their native kingdom. Nor was such homage ever again performed by William, his son, or his grandson; or it would have inevitably been followed by the English king repeating the conduct of Henry II., and exercising the prerogatives of an overlord over Scotland proper, and all the vassals of the Scottish crown.

In the feudal era, when any one became the vassal of another, he *first* performed the homage, and then received

* *Fœd.*, vol. 1, pt. 1, p. 50. Richard's charter is passed over unnoticed by Edward I. (*Do.*, pt. 2, p. 769). Sir Francis Palgrave has also forgotten it in his "Proofs and Illustrations;" as well as the following passage from *Ben. Ab.*, *ad an.* 1189, relating to the homage performed at Canterbury, "Rex Scotorum fecit ei homagium pro dignitatibus suis habendis in Anglia, sicut Reges Scotorum prædecessores sui habere solebant temporibus Regum prædecessorum Angliæ. Ricardus vero Rex Angliæ . . . . . eum et omnes hæredes suos quietos clamaverunt in perpetuum ab ipsis et regibus Angliæ, de omni ligantia et subjectione de Regno Scotiæ, etc." Such was the construction put upon Richard's charter by a contemporary English chronicler, though it has been contended in the nineteenth century that the independence of Scotland was not acknowledged by it.

the fiefs for which the homage was rendered. The homage might be either general or specified, vague or for fiefs particularized, liege or simple. Thus, after some dispute, Edward III. acknowledged himself "the liegeman of king Philip of France against all men," for the duchy of Guyenne and the county of Ponthieu: his homage was liege, and the fiefs for which it was rendered were specified.* The homage extorted from William by Henry "per novas chartas et per captionem suam," was distinctly specified as "liege homage for the kingdom of Scotland and all his other lands." That rendered at York by Alexander II., in 1287, was for the lands he received in England in compensation for his claims—*de prædictis terris.*† In other cases, and often where the nature or extent of the homage was a matter of dispute, it was tendered in general terms, and a reservation was often made by the tenderer, or the acceptor, or by both. Thus, in the case of Philip and Edward, alluded to above, the former accepted the liege homage of Edward *sauf son droit*—the very words so often occurring in the transactions relating to homage between the English and Scottish kings—with a reservation of his claims as actual proprietor of certain lands in Gascony. So also, in the English version of the homage rendered by Alexander III. to Edward I., after he had become "the liegeman of the king of England against all men," Edward is represented as accepting his homage "salvo jure et clamio . . . . pro homagio pro regno Scotiæ."‡ Evidently according to the feudal interpreta-

* *Fœd.*, vol. 2, pt. 2, pp. 765, 797, 813.

† *Do.*, vol. 1, pt. 1, pp. 233-34.

‡ *Do.*, vol. 1, pt. 2, p. 563. I have given my reasons further on for not regarding this Memorandum as a contemporary or authentic document. It may be assumed, however, as a certainty, that whoever framed it, did so according to the strictest ideas of the feudal period. Had such a vague and general homage carried with it the dependance of the kingdom of Scotland, he would have scarcely thought it necessary to represent Edward as reserving his claim to homage for that kingdom for future discussion. The words, it will be observed, which he places in the mouth of Alexander are identical with those used by Edward III. to Philip of France. Edward III. specified the duchy and county for which he became "liegeman against all men" of the French king (as in the true version of the ceremony Alexander III. did to Edward I.); but it was evi-

tion, and as the writer of the Memorandum understood it, a tender of homage in general terms did not necessarily carry with it anything more than the vague and general allegiance of the homager; and Edward is accordingly represented as accepting such general homage with a reservation of his further claims. In all cases of vague and general homage it is important to bear this in mind.

The homage performed by the kings of Scotland appears to have been usually of this vague description, and tendered in general terms—not unlike the first homage of Edward III. to Philip "par paroles generales, en disant que nous entrioms en son homage par ainsi come nous et noz predecessours, ducs de Gyenne, estoient jadis entrez en l'omage des Rois de France"—and often, in the first instance, with a reservation. Thus Malcolm IV. became "homo regis Angliæ eo modo quo avus suus fuerat homo veteris Henrici"—"par paroles generales . . . . . *ainsi come noz predecessours*"—evidently in general terms, and with a reservation "salvis omnibus dignitatibus suis."* There is no account of William's original homage to Henry II., but as "liege homage for Scotland" was extorted from him after his capture, and as at Canterbury, when replaced upon the footing of his predecessor, he became the liegeman of Richard vaguely "for all the

dently the object of the framer of the Memorandum to represent the claim to homage for Scotland as evaded, not denied, by the Scottish king, and finally left an open question.

* *Hoveden* 1157. The meaning of this reservation has been a frequent subject of discussion, some supposing it to refer to the independence of the Scottish kingdom, others to a claim upon the English crown. Such claims, however, would surely have appeared under a title expressing something more substantial than "a dignity." When William was replaced by Richard on the footing of his predecessors, the homage he performed at Canterbury was rendered, according to *Ben. Ab.*, "pro dignitatibus suis habendis in Anglia, sicut reges Scotorum prædecessores;" or according to *Hoveden*, "sicut Malcolmus frater suus habuit;" and amongst the subjects left for discussion by four Peers of each realm were "escorts, expenses, liberties, *dignities*, and honours;" the Charter of Privileges being probably the result of their united judgment, confirming William in all that Malcolm was shown to have enjoyed. At the time of Malcolm's homage there was probably some point of a similar description which had not been thoroughly settled, and which accordingly was thus reserved for future discussion; but *a dignity* could scarcely have referred to any question of important international interest.

lands for which his ancestors were the liegemen of the English kings," there seems no reason to doubt that it was identical with the homage of Malcolm and David, and rendered in general terms. In his homage to John at Lincoln, William, "devenit homo regis Angliæ *de jure suo*, et juravit ei fidelitatem de vitâ et membris et terreno honore suo contra omnes homines, et de pace servanda sibi et regno suo, *salvo jure suo*,"* a form of vague and general homage which allowed much latitude to both parties in interpreting *jus suum*. There is no account of the original homage rendered by Alexander II. to Henry III., though as the Close Rolls mention that he was "enfeoffed" in all the lands which Earl David held under him in nine English counties after "venit ad fidem et servitium nostrum, et nobis fecit quod facere debuit,"† from the vagueness of these expressions it was also probably couched in the usual general terms. His subsequent homage at York was for a further grant of lands in compensation for all claims; and when his son Alexander III. first performed homage at the same northern capital, it was "ratione tenementi quod tenet de domino Rege Anglorum, de Regno Angliæ scilicet," according to the English chronicler, who adds a novel claim by explaining it by the words "*Laudiano* videlicet et reliquis terris."‡ The very raising such a novel claim (in the chronicle) and the demand for homage for Scotland, raised and waived by the English king, implies that the fiefs for which such homage was performed did not include the native kingdom of the homager. Much of the vagueness which is observable in the Scottish homages is to be attributed, not to a desire on the part of the Scottish sovereigns to elude acknowledging a dependance which they had not the courage to deny, but rather to a wish to leave open the question about the extent of their claims upon the English crown. Had they specified their homage distinctly—tendered it, for example, for Hunting-

* *Hoveden* 1200. Compare vol. 1, c. 13, p. 417-18, and notes.

† *Rot. Claus.*, p. 348.

‡ *Mat. Par.*, p. 555.

don—they would by so doing have resigned all claims upon the coveted earldom of Northumberland.

Such were the principal occasions on which homage was rendered by the Scottish to the English kings; for it was only at the commencement of a new reign, or upon the acceptance of a new fief, that the question of homage was of any real importance. Once tendered and accepted in the terms mutually agreed upon, its repetition on the coronation of an heir, or on any other similar occasion, added no real strength to the original tie, and was simply the reiteration of a form already settled. It was of no more intrinsic importance than the repetition of the ceremony of "kissing hands" on each successive appointment, a ceremony indeed which represents in the present day the old feudal tender of homage in acknowledgment of a royal grant. In short, the real question of the feudal superiority of the one country over the other resolves itself into the inquiry, What did Henry gain by the Convention of Falaise? According to the wording of the treaty he gained a distinct acknowledgment of the feudal dependance of Scotland upon his crown; and if the history of the period is to be believed, he unsparingly exercised, during the remainder of his reign, the prerogatives of an overlord which he had thus acquired. Such, however, would have been the normal condition of Scotland had her kings always performed homage for their native kingdom; the Convention of Falaise would have been a mockery, and Henry would have reaped no advantage from the fortunate accident which placed William at his mercy.

Everything connected with this question has so long been the subject of bitter contention, and has been so frequently argued with all the bias of strong partizanship, that it is not a little difficult to avoid occasionally following in the usual beaten track. But on viewing the relations between the two countries after the Norman Conquest as much as possible in the spirit of a judge rather than in that of an advocate of either party, it will be found that the claims of the more powerful kingdom on the feudal dependance

of the weaker were scarcely, in the first instance, the result of any settled plan, or deep laid scheme of policy—much less of a traditional dependance of centuries upon a mythical Saxon empire—but grew up by degrees out of the events of a later period. When William the Norman marched northwards, six years after his victory at Hastings had placed him upon the throne of England, his hold upon his new kingdom was scarcely yet firmly established. Northumbria was still in that disturbed and lawless condition which, ten years later, prevented its northern portion from being included in the general survey of the kingdom, and it was his object, not to add another to the many elements of discord in the north by asserting an empty claim to the dependance of Scotland, but to secure the peace of his northern frontiers. When the Norman army, in overwhelming force, was once transported beyond the "Scotswater," Malcolm, who had no power of retiring upon the northern districts, where the population was either lukewarm in his cause or openly hostile to it, at once came to terms; and the treaty of Abernethy secured peace in this quarter, with one trifling exception, during the remainder of William's reign. The Atheling was now encouraged to come to terms with his kinsman's new ally; his supporters no longer received the assistance which had hitherto been openly accorded them; and William henceforth was at leisure to turn his whole attention fearlessly elsewhere. All this was brought about by the same means through which the English ministry were accustomed, about a century and a half ago, to pacify the Highlands—he *pensioncd* Malcolm. The grant of manors, and the annual subsidy of twelve marks of gold, were nothing else than a pension, necessarily acknowledged in the feudal era by *homage*—for all "gentle tenure" was at this period held by free or gentle service, necessitating homage—or else the pension would have been a *tribute*. The subsequent conduct of Rufus seems to have been dictated by overweening arrogance rather than policy—*nimia superbia*—for he appears to have cared little about deriving any fixed and permanent advantage from circum-

stances which must have unquestionably enabled him to attach any terms he chose to the assistance he rendered to the two elder sons of Malcolm Ceanmore. He was satisfied, apparently, with a vague admission of his general superiority—and amidst all his faults there were gleams, occasionally, of a careless generosity in the character of the Red King—but it must not be forgotten that peace, rather than conquest, was the policy of the Norman kings upon their northern frontier, and as the laws which Earl Henry swore to observe, when he received the earldom of Northumberland from Stephen, were "the Laws of King Henry," it may be gathered that the Anglo-Saxons beyond the Tyne were scarcely brought into a state of settled obedience to the Anglo-Norman dynasty before the reign of the Conqueror's youngest son.

Henry raised no claims upon the kingdom of his queen's brothers, and he appears to have discouraged rather than promoted the pretensions of the See of York. Alexander, accordingly, was not amongst the great liegemen of the English crown who tendered their allegiance to the ill-fated heir of Henry and "good Queen Maud;" but David was situated differently, being an English baron in right of the Honor of Huntingdon, and a connection of a more intimate description was thus established between the two crowns.* From this period it became the settled

* In the language of imperial feudalism, the *Honor* was often used for the Benefice, but it would seem to have been only applied strictly to those held by "noble service," and in an ecclesiastical sense was equivalent to a Bishopric, an Abbacy, or any other greater Benefice. In Spain the Honor was a fief held unconditionally, the *Feudum* being held by stated service, and the *terra* by rent from year to year—much as the *Gavel* often was in Scotland. In France, where it occasionally meant the *Banlieu*, and in England, it generally appears in connection with a royal castle, the defence of which was provided for originally by granting lands to a certain number of knights—much as in earlier times the neighbouring landholders were bound to supply and support a man, one out of every nine, for the imperial *Burh*—who held these lands by the tenure of "castle-ward," or providing the garrison of the castle, and were known as "the men of the Honor," their lands, which were all held with *sac*, and *soc*, and other baronial privileges constituting the Honor, and generally in early times (though not latterly) answering to the surrounding district, or *Banlieu*. In the grant of Richard to Earl David it is said that "David, his heirs, and his *men of the Honor of Huntingdon*

object of the Scottish kings to assert their ancestral claim upon the northern counties, which, if admitted, would have undoubtedly gone far towards reuniting the greater portion of the old Bernician kingdom under the male representative of the Saxon line; whilst the English kings were always naturally averse to add the important earldom of Northumberland to the other fiefs, conferred upon the royal family of Scotland in virtue of their descent from Earl Waltheof. The results of Stephen's troubled reign,

who hold or shall hold lands in any county or bailiwick of the Honor, shall hold them free and privileged, with *sac* and *soc* . . . . . without aid to sheriffs . . . . without *opus servile* . . . . and with free right of forest and warren." An Honor, however, did not necessarily carry with it an earldom. It may be gathered from the following grants of Henry II. that a grant of the *tertius denarius* carried with it the *comitatus*, a grant of the *Honor et castellaria* conveying a castellanship, or constableship, the strictly military office of *Staller* rather than the judicial office of *Judex Fiscalis*. "Sciatis me dedisse comiti Alberico, in feudo et hæreditate tertium denarium de placitis Oxenfordscyre, *ut inde sit comes*." "Sciatis me fecisse Hugonem Bigot comitem de Norfolc, *scilicet de tercio denario de Nordwic et de Norfolc*." "Sciatis me dedisse Willielmo comiti Arundel castellum de Arundel cum toto honore de Arundel . . . . tenendum in feodo et hereditate, et tertium denarium de placitis de Suthsex *unde comes est* . . . cum omnibus . . . predicte *honori et castellarie* pertinentibus." As all titles, however, were gradually disconnected from the offices out of which they first arose, the king might confer the dignity of an earl, or attach the dignity to a fief, without any reference to the duties or prerogatives of the earlier *Comes*. It may be doubted, however, whether any English *earldom* was ever granted to the Scottish princes, who, when not sovereigns, were earls in their own right, holding the *Honor* of Huntingdon, and hence deriving their title. After the destruction of Huntingdon castle Fotheringay supplied its place, and it was that castle which was made over to Alexander II. by Hubert de Burgh, when he obtained the wardship of the Honor during the minority of his cousin Earl John. On the death of the latter, Alexander sent to claim the "*comitatus* cum pertinenciis," and the wardship; with very faint hopes of the latter, however, for his envoys add "licet ad hoc specialmenter non mittantur." All claims in that era were regulated upon the same principle by which a modern plaintiff estimates his "damages" in a court of law, and in testing the *historical* accuracy of such claims, from whatever quarter they are raised, this feature should always be borne in mind. Henry replied that, by the law of England, the king had the wardship of all fiefs, whether held *in capite* or *subinfeoffed*, if held by military service; and that no act of Hubert de Burgh, during his own minority could militate against the prerogatives of his crown. As *all the heirs of Earl John*, however, were of full age, the king of Scotland should receive seizin of his fief, "*the Honor* of Huntingdon," for this special reason (*i. e.*, because they were of age), and not "ratione predicte seisine"—through Hubert's grant of the wardship. By this time the feudal

however, and the political necessities of Henry Fitz-Empress in his early years, all but annexed that earldom to the Scottish crown, and the demands of Henry with which Malcolm complied at Chester—demands which will be best justified on the plea of expediency—simply replaced the kingdoms on their earlier footing; the footing on which William was again reinstated when Richard's charter at Canterbury released him from the allegiance rendered at York for his whole kingdom. A question then appears to have arisen about the nature of Malcolm's homage, whether liege or simple, Henry refusing knighthood to his youthful kinsman until he had duly won his spurs in "liege service." The question thus settled in favour of "liege service," William rendered it without any hesitation; though it was subsequently evaded by the "subinfeofment" of the Honor to Earl David and his heirs, who thus became liable for the due performance of the service by which the fief was held, gradually acquiring a hereditary right to the fief itself.

Once replaced upon the footing of his brother and his grandfather, William zealously endeavoured to carry out the favourite object of the now hereditary policy of his family, and his offer of 15,000 marks tempted Richard to listen to his claims upon the earldom of Northumberland. But the earldom without the castles—the *tertius denarius* without the *Honores*—would have scarcely promoted the end at which he aimed, though had the marriage between his daughter Margaret and Otho of Saxony taken place, and had the earldoms of Northumberland and Carlisle, the great inducement probably of the negotiation, been placed with their castles in William's hands, he might

principle of *Emphyteusis* had entailed the Honor upon the heirs of Earl David, now represented by his daughters; and accordingly, when John Balliol performed homage to Edward I., in 1291, for all the lands which his predecessor had held in Tynedale, and elsewhere, of the English crown, he also added homage "de *proparte* sua honoris de Huntingdon"—for his *share* of the Honor of Huntingdon, which did not finally lapse to the English crown until the extinction of the lines of Balliol and Hastings and the forfeiture of that of Bruce. *Fœd.*, vol. 1, pt. 1, pp. 41, 42, 48, 165. *Doc. Illust. Hist. Scot. Illust.* i., ii., iii. *Introd.*, p. vii. viii. *Ducange* (*Heinschel*) *in voc. Honor.*

have hoped to consummate the policy of his grandfather, and lay the foundation of the further extension of his kingdom to the Tyne. The prosecution of his claims upon the northern counties, and a backwardness apparently on the part of John in fulfilling the stipulations of Richard's Charter of Privileges, all but kindled a war between the two kingdoms, deepening the devotion of William to the Papal See when Innocent III. laid the Interdict upon England, and rendering him a willing listener to the overtures of Philip Augustus, who seems to have been anxious to bind William to his cause by an alliance with some member of his family.* Though the

* *Vide* vol. I, c. 13, pp. 417-18, and notes. In the Close Rolls, vol. I, p. 43 B, is a letter from John, dated 24th July 1205, which concludes thus, "et sciatis quod bene placet nobis exceptio quæ fecistis in litteris vestris *de terra de Tundel* vobis retinenda, unde mentio facta non fuit in conventione inter nos prolocuta, et unde prius saisistis fuistis." The lands of Tyndale, then, which were held by "simple homage," and passed with the other lands of the Scottish kings to John Balliol, were not included amongst the lands which Alexander II. received in compensation for his claims. It would be difficult to say how and when they came into the possession of the Scottish princes. In his account of the transactions at Lincoln between John and William, Dr. Lingard has been singularly inaccurate. He writes thus, "John eluded the demand (for the northern counties) by promising to return an answer at his leisure; and received from William a charter, in which that prince is said by a contemporary writer to have acknowledged the feudal supremacy of the English crown, to have engaged to keep the peace of the king and kingdom, and to have bound himself not to marry his son without the permission of his liege lord." In a note to this passage he charges Hoveden with *adding* a clause to a passage written about two centuries after his death, and goes on to say, "Henry III., John's son, in a letter to the Pope, asserted that this was liege homage for the crown of Scotland." The "contemporary writer" of Dr. Lingard is—*Brompton;* a chronicler who quotes the "Flores Historiarum" of Wendover, and alludes to the reign of Edward III.! (*Twysden*, p. 804, 967.) It is to *his* account that Hoveden is accused of adding the inconvenient clause "salvo jure suo!" The historian's "charter" binds William and his son to be liege subjects to *the son and heir* of John, a singular stipulation to have been made in 1200, as the son and heir was not born until October 1207! The very last sentence of Brompton, in which he asserts that William was *subsequently* punished by John for betrothing his son without the consent of the English king, is as palpable a blunder as the rest of his narrative; for the negotiations with Philip Augustus were set on foot *before* the meeting at Lincoln, which probably arose out of these very negotiations. For Henry's letter to the Pope "asserting that the homage at Lincoln was liege homage for the kingdom of Scotland," I have searched in vain. The only letter at all answering to this description will be found in the *Fœdera* (vol. I,

devotion of William towards the Pope was passed over in silence, the fear and the wrath of John were both excited at the slightest prospect of an alliance with his enemy of France; and to put a final stop to any such contingency he insisted upon his right to exercise the full prerogatives of his *suzerainty*, and to call William to account for aiming at an alliance with the open enemies of "his lord," and for negotiating a marriage-contract with these enemies without the permission of the suzerain of whom he held his English fiefs. William long demurred to an alternative which was most distasteful to the majority of his subjects, but his fiefs, his privileges, and his favourite claim upon Northumberland were all in danger—for John was in earnest—and he at length agreed to pay 15,000 marks "for his lord's good will," and for the execution of certain stipulations arranged in their mutual charters, placing his two eldest daughters in the hands of John, to be married according to the tenure of this arrangement.*

p. 1, p. 214), and shows that, at the time it was written, Henry was endeavouring to confound the homage rendered by William and Alexander to John and *himself* in 1212, with the homage *for Scotland* rendered by William alone at York to Henry II.; but it makes not the slightest allusion to the meeting at Lincoln, which took place seven years before Henry III. was born.

* *Fœd.*, vol. 1, pt. 1, p. 103; *vide* also vol. 1, c. 13, pp. 422-24, and notes. The money was paid "pro habenda benevolentia domini nostri, et pro conventionibus tenendis quæ inter ipsum et nos factæ, et per cartas nostras hinc et inde confirmatæ sunt." The hostages on the same occasion were given as security for the payment of the money; "et pro hac pecuniâ et ad prædictos terminos reddendâ, et pro eisdem terminis fideliter tenendis." From a passage in *Chron. Mel.*, *ad an.* 1209, it may be gathered that William "paid his own expenses" on this occasion; and as the expenses of the kings of Scotland on their visits to England were guaranteed by the Charter of Privileges, and frequently alluded to in the Close Rolls, it may be inferred that John, regarding William's conduct as a breach of fealty, refused to fulfil his obligations as a "lord" until William agreed to carry out strictly all the duties of "a liegeman." Had the latter declined he would have been *forfeited;* and it was partly "pro habenda benevolentia domini nostri"—to reinstate himself on his former footing—that the money in question was paid. John appears to have been justified in his conduct on this occasion. The alternative offered to William seems to have been, "either resign your English fiefs and privileges, or resign the alliance of the enemy of England, and give security for your future fidelity;" and if William reaped the advantages, it was only fair that he should fulfil the obligations of his English fiefs and dignities. It was for him to decide whether the obligations thus entailed

The bonds of union between the two kings, who after the settlement of their dispute appear to have been on comparatively friendly terms, were drawn still closer a few years later; and when both were threatened by their unruly subjects they are said to have entered into a defensive and offensive alliance, William conceding to John the right of marrying his son and heir, within six years, to whom he chose, "saving the dignity of the Scottish crown."* Such was the state of Scotland during the last five years of William's

were sufficiently repaid by the advantages of the English connection; and his people seem to have decided in the negative. But to describe the Scottish king as "demurring," and reluctant to perform the homage to which he was "summoned," betrays an ignorance of the nature of the feudal tie, as well as of the relationship between the two parties. The Scottish princes held certain lands, and enjoyed certain privileges, in England by liege homage, which was necessarily rendered before they could either enter upon their lands or enjoy their privileges. Beyond promoting the security of their northern frontier, by thus retaining a certain hold over princes otherwise independent, it was of no material importance to the English sovereigns that these fiefs and privileges should be held by members of the neighbouring royal family. The advantage was entirely on the side of the latter, with whom, consequently, it *was* a material object that their homage should be tendered, and accepted, as soon as possible. The tender of homage necessarily came first from the receiver of the "benefaction," the liegeman, and was accepted or refused by the donor, the liege-lord. The benefit, or loss, was almost entirely on one side; and accordingly, when Alexander III. tendered his homage at Tewkesbury, and Edward postponed receiving it, the Scottish king received a letter assuring him that he should *suffer no prejudice* from such postponement—that it should not be regarded as a refusal of the homage, which, amongst other disadvantages, might have justified his English tenants in declining to pay any rent (*Doc. Illust. etc.* ii.) Where there were disputed points, they were arranged before the homage was rendered, or reserved at the time it was performed; the *terms*, not the actual homage, being all along the real point of importance, one party claiming as much, and the other granting as little as possible. To represent one king as "demurring," and reluctant to obey the "summons" of the other, is to suppose either that the king of Scotland entertained the hope of holding his English fiefs without performing homage—in other words, as absolute property, and integral parts of Scotland; or that the king of England was most strangely bent on forcing on the acceptance of the reluctant king of Scotland a grant, which may be described as the equivalent of an office of great dignity and a lucrative pension at the present day, whilst the king of Scotland as strangely objects, not to the *terms*, but to the actual office and pension!

* *Fœd.*, vol. 1, pt. 1, p. 104. "Ubi voluerit ad fidem ipsius domini Regis, ita quod non disparagetur" are the words. This is the letter which Brompton has converted into a charter given at the meeting at Lincoln in 1200. *Vide* also vol. 1, c. 13, p. 429 and note.

reign ; her king acknowledged his *personal* obligations, as a vassal of the English crown, to their fullest extent, but simply as personal, and binding on the royal family alone. No instance can be brought forward in which John either claimed, or exercised, the privileges of an Overlord of Scotland in the same manner as his father, or asserted a feudal right to the "wardship" or "maritage" of any "tenant-in-capite" beyond the Tweed. The right which he claimed and exercised over William's family was strictly personal, and, as such, could only have been exercised as Overlord of his English fiefs.*

The influence of Eustace de Vesci, and a promise of the northern counties, enrolled the youthful Alexander amongst the adversaries of John in support of the French

* By the law of England, as laid down in the answer of Henry III. to Alexander II., the sovereign could claim the wardship of all fiefs held by military service, whether belonging to tenants *in capite*, or *subinfeoffed.* (*Doc. Illust.*, *etc.* I.) Had the English sovereign been overlord of Scotland, he could of course have claimed the wardship and maritage of every Scottish baron holding by military service, instead of limiting his demand to the royal family alone. "Assuredly the superiority so proudly assumed on all these occasions by the English, and so tamely admitted by the Scottish monarch, must have been founded on a broader basis than that assigned by certain writers, the possession of a few scattered manors in the northern counties." *Lingard Hist. Eng.*, vol. 2, c. 5, p. 319. Such is the only notice taken by this historian—whom I quote, here and elsewhere, as the latest assertor of the English claims in their fullest extent who has touched upon this period of history—of the arguments contained in Mr. Allen's able "Vindication of the Independence of Scotland." "A few scattered manors" is scarcely a correct description of the Honor of Huntingdon, extending into *nine counties*, of the lands in Tynedale, and of the privileges and dignities ensured by the Charter of Privileges, including the payment of all their expenses whenever the Scottish kings visited England. When sound argument is answered by vague declamation it is generally a sign of the weakness of the cause thus defended; and until the supporters of John's feudal superiority over Scotland can prove that he exercised the prerogatives of suzerainty in the same manner as his father and his grandson, the existence of any such superiority may be safely questioned. Walter Bisset knew the feudal law better when, in revenge for the punishment of his atrocious crime, he denied the right of Alexander to forfeit him, or to shelter Geoffrey de Marisco, without the consent of Henry, whom he artfully styled "his Overlord." (*Mat. Paris* 1242, p. 397.) Such would have been the result of the superiority of John, had it been founded "on a broader base than a few scattered manors in the northern counties," and Eustace de Vesci, when he fled from John, would have been delivered up by William to "his Overlord," instead of remaining in security at the court of his father-in-law.

Prince Louis, but the return of peace in the following reign replaced him upon the footing of his predecessor. After the expiration of the six years named in the latest agreement between John and William, Alexander appealed to the Pope, praying that the conventions in "the mutual charters" should be carried out; the legate Pandulph was appointed arbitrator, and the young king received the hand of the English princess Joanna, whilst it was decided that his sisters were "to be honourably married within the realm of England," the eldest, Margaret, soon afterwards becoming the wife of Henry's guardian, Hubert de Burgh.* As long as the most influential personage in England continued to be the heir-presumptive to the Scottish crown, the two countries remained in profound peace, and Alexander, satisfied with the interpretation of the mutual treaties, made no claim for further compensation, whilst Hubert felt little desire to favour any encroachments upon a kingdom which might eventually be his own. The fall of the great Justiciary, however, put an end to this satisfactory state of affairs, and the evil influence of the alien Peter des Roches soon sowed the seeds of discord between the two countries. The Archbishop of York was encouraged to put forward a claim to officiate at the coronation of the king of Scotland, and in answer to a letter of the English king, in which the treaties of Northampton and Norham, between William and John, appear to have been artfully confounded with an incorrect version of the convention of Falaise, the Pope, ever ready apparently to interfere on either side, exhorted Alexander to tender liege service and fealty, with all his earls and barons, to their suzerain Henry of England, authorizing the prelates of York and Durham to add their admonitions to his own.†

* The stipulation, "to be married within the realm of England," marks the jealousy of a foreign alliance, which lay at the root of all these proceedings. This arrangement, which appears to have been decided on before Pandulf (*Rot. Pat.* 4, *Hen. III.*), must not be confounded with the original convention between John and William. It was probably a compromise, with which Alexander seems to have been perfectly satisfied until Henry began to display an unfriendly feeling towards him.

† *Fœd.*, vol. I, pt. I, pp. 209, 214-15. In the subsequent arrangement in 1237, when it was decided that all the

Hitherto Alexander had loyally refrained from interfering between Henry and his revolted barons, but such encroachments upon the liberties of his kingdom could not safely be passed over, and he met them, in the usual spirit of the age, with a counter claim. The papal admonition was dated in January 1235, and after the pacification of Galloway in the course of the same summer, Alexander strengthened his influence amongst the English national party by uniting his youngest sister Marjory with Gilbert the Mareschal, Earl of Pembroke, and in the following spring his envoys presented themselves in the Council of London to demand the "chartered rights of their king." A meeting was arranged at Newcastle, where Alexander protested that it was infamous to annul the plighted word of a king supported by the testimony of his own nobles; and so strongly were the English barons impressed in his favour, that the matter was eventually compromised, the Scottish king receiving a grant of manors of the yearly value of £200 for all his claims, including those upon Northumberland. Thus were at length satisfied the pretensions of the Scottish princes upon the northern inheritance of their maternal ancestor, and such was the sole result of exchanging the conciliatory policy of Hubert de Burgh

"mutual conventions" between John and William were to be restored, a reservation was made "quod si in ipsis scriptis, vel instrumentis, aliquæ capitula *negotium præsens non tangentia* invenientur, quæ alterutius regum utilitatem contineant, *debent prædicta capitula per utriusque regum literas innovari.*" (*Do.*, p. 233.) Had such a charter as Henry alludes to really existed, this clause would have caused it to be renewed and preserved in force. So thoroughly, however, was the claim a fabrication of the moment, that it is not even alluded to in Edward's letter to the Pope (*Do.*, pt. 2, p. 932). Giraldus Cambrensis must therefore have been mistaken when he wrote of William as follows:—"Proinde divina ut creditur ultione secuta (for retaining the church patronage in his own hands) honorem suum et regni sui . . Scotia denuo subacta, et Anglis in subjectionem data, in senio jam constitutus amisit, etc." (*De Instr. Princip. Ang. Chris.*, App. xiii.) He probably only expressed the general opinion in England about "the secret treaties" at this period. So within a few years of the death of Henry II., the Scots asserted that the homage extorted by him from William was only for Lothian, not for Scotland proper (*Do.*, c. 1). In both cases written documents attest that English and Scots were alike in error; but such assertions show how careful the historian should be in admitting the statements of chroniclers upon important points when they are unsupported by written documents.

for the system of encroachment encouraged by Peter des Roches. The king of Scotland was the sole gainer by the change.*

Five years later the peace of Scotland was again threatened through the intrigues of Walter Bisset. Joanna of England died in 1238, and in the following year Alexander sought the hand of Mary de Couci, a French alliance which was regarded with distrust by the English king. Henry accordingly appears to have lent a willing ear to the artful insinuations of Bisset, who, banished for his participation in the murder of the young Earl of Atholl, maintained that Alexander had exceeded his right in forfeiting one of his nobles without the concurrence of his Overlord Henry, and in sheltering Geoffrey de Marisco, a fugitive from the court of his English suzerain. Summoning the whole military force of England and Ireland to concentrate upon Newcastle, Henry called Alexander to account "for the construction of two castles in Galloway and Lothian by Walter Comyn and others, to the prejudice of the king of England, and contrary to the charters of his predecessors; for the reception of Geoffrey and other fugitives and exiles; and for meditating an alliance with France, and the withdrawal of his plighted homage." Alexander, relying upon the support of the

* I have grounded my account of these transactions, not on Scottish, but solely on English authorities. The claims of Alexander were, according to *Mat. Paris* 1236, p. 296, "causa justa regiis munimentis consignata;" and the passage in the *Rot. Pat.* 21, *Hen. III.*, "Inter cætera apparet quod concordia fuit quod Rex Angliæ *duceret Marger sororem dicti Regis Scotiæ*," is very strong testimony in favour of the English chronicler's remark. That this marriage was one of the arrangements for which the 15,000 marks were paid by William, and that the decision before Pandulf was a compromise, may be inferred, both from the passages quoted above, and from the further compensation made to Alexander in 1237. How far the remission of half the sum in 1210 (*vide* c. 13, p. 424) may have altered the circumstances of the case, it would be difficult to determine. The claim of the Archbishop of York was put forward and supported by Henry in 1233 (*Rot. Pat.* 17, *Hen. III.*); and he appealed to Rome in 1234, the Pope sending back his admonition to Alexander in 1235. In 1236 the Scottish king first raised his counter claim; yet he has been represented, in defiance of these dates, as the aggressor, and Henry as the aggrieved party, appealing to Rome in 1234 against claims raised in 1236!

northern English barons, marched his army into an entrenched camp at Ponteland, and the situation of the two kings not a little resembled that of their fathers five and thirty years before. But it was not with a broken and infirm king that Henry had to deal; the majority of the English barons, personally attached to Alexander, and averse to the war, regarded his cause as just and rightful; and an arrangement was concluded, by a mutual interchange of charters, in which the Scottish king appeased the fears of Henry about the French alliance, by engaging "to enter into no confederacy with the enemies of his liege lord, nor to invade or injure in any way his territories, unless he himself was unjustly dealt with," whilst Henry pledged himself, in a similar manner, never to declare war against Scotland except in self-defence, the bishops and barons of both kingdoms becoming sureties for the due execution of the treaties.*

* *Mat. Paris* 1244, p. 436-37. *Fœd.*, vol. 1, pt. 1, p. 257; pt. 2, p. 616. Dr. Lingard has compressed all these occurrences into three or four lines, omitting all notice of Walter Bisset, and of the mutual treaties, that "neither king shall make war against the other except in self-defence," and, as usual, representing the Scottish king as the aggressor, and smarting under the rightful dependance of his kingdom. He thus concludes—"The Scottish king thought it prudent to negotiate, and consented to an arrangement, by which, though he eluded the express recognition of feudal dependance, he seems to have conceded to Henry the whole substance of his demand." He quotes Paris as his authority, whose words are as follows:—"Compositum est inter ipsos Reges, procurente comite Ricardo, et aliis magnatibus salubriter et prudenter utrobique intermeantibus. Rex enim Scotiæ, vir bonus, justus, pius et dapsilis, ab omnibus tam Anglis quam suis diligebatur et merito. Habebat itaque exercitum numerosum valde et fortem . . . . qui omnes unanimes, confessi et predicantium consolatione, quia pro patria sua *juste* dimicaturi forent, animati, mori minimè formidabant. Ne autem tot Christianorum sanguis effusus ad Dominum clamaret . . . pax feliciter . . . est reformata." It seems difficult to extract from this passage, either that the Scottish king was the aggressor, or that "he thought it prudent to negotiate." The overtures for peace, whether prudent or not, came from the other side, and seem to have been dictated by a friendly feeling towards Alexander, and a reluctance to enter unnecessarily upon a desperate and bloody contest. In attributing, however, to Henry the intention of "enforcing his pretensions" to Alexander's homage for Scotland, the historian has totally mistaken the meaning both of Paris and of the treaty in the *Fœdera*. Henry never demanded "a recognition of feudal dependance," but *the renunciation of the French alliance;* and no question appears to have been raised about the *character* of Alexander's homage, but about its *withdrawal*—"quasi conniventer volens

The long minority of Alexander III., who was under eight years of age when he came to the throne, opened a wide field for encroachment, but Henry's first attempt to set aside the coronation of his "liegeman," and to obtain the tenths of the ecclesiastical benefices of Scotland, was frustrated by the answer of the Pope. At a later period, however, the anxiety of Pope Alexander IV. to obtain the assistance of Henry against the Emperor, induced him to reverse the decision of his predecessor about the ecclesiastical benefices, though it needed a severe admonition from the Pope before the Scottish clergy would comply, and Henry's written pledge to Alexander that no injurious precedent should be founded on the papal grant.* The usual homage for the fiefs which he held of the English crown was performed by Alexander at York, in the Christmas of 1251, on the occasion of his marriage, when a child of ten years of age, with the princess Margaret of England. The claim for further homage for his native kingdom, raised and waived by his father-in-law, distinctly marks the actual homage to have been for fiefs in England. Two years and a half had now elapsed since the death of the late king, and had the English suzerainty over Scotland been a reality instead of a pretension, during the whole of this period Henry would have held, by unquestionable right, the wardship of his liegeman's kingdom. His interference in the affairs of Scotland, however, dates only from after his daughter's marriage with the youthful sovereign of that kingdom; and as it was based upon no

substrahere sibi homagium quod ei tenebatur, Francis confederatus." The withdrawal of homage would of course have been tantamount to a declaration of war, and was an ordinary form of doing so. Bruce and Balliol "withdrew their homage" from David just before the battle of the Standard. Alexander satisfied the fears of Henry on this point by promising "quod in perpetuum bonam fidem (ligio domino nostro) servabimus pariter et amorem et quod nusquam *aliquod fœdus inibimus cum inimicis* domini Regis Angliæ;" and mutual treaties of peace were interchanged. Homage for Scotland is never alluded to. As no mention is made, either of Comyn's castles, or of the reception of Marisco—grievances probably suggested by Walter Bisset—it is probable that Henry, once satisfied about the French alliance, raised no further question about the other points.

* *Fœd.*, vol. 1, pt. 1, pp. 277, 303, 322, 336, 348, 349.

legal title, but only upon his connection with Alexander as his wife's father, so it was always accompanied with an express disclaimer of every intention of founding injurious precedents. When he assisted Durward in the formation of a regency devoted to his own interests as their chief and nearly sole support, though so exasperated against the former regents that he deprived Balliol and De Ros of all their English fiefs—a forfeiture which Henry would willingly have extended to the other members of the regency had they held their Scottish fiefs of an English suzerain—he carried out his measures under the title of "Principal Counsellor of the illustrious king of Scotland," and not as legal guardian of the realm during the minority of the heir, in virtue of his superiority over the kingdom.* Horton's subsequent mission appears to have had little, if any, reference to the affairs of Scotland, and when Alexander, then in his twentieth year, repaired with his queen to the court of England, Henry bound himself to refrain from all allusion to Scottish politics during the visit; and he swore on his soul, that if an heir were born during the residence of Margaret at Windsor Castle, in case of the deaths of both the parents, he would not detain the child, but make it over at once to the custody of the Scottish nobles.†

The character of Edward was of a very different stamp from that of his father, and Alexander was always carefully guarded in all his feudal transactions with him, obtaining a full recognition that his attendance at the coronation of his wife's brother should afford no pretext for any precedent, injurious either to himself or his successors, whilst the "aid in money" subsequently sent to Edward,

* *Fœd.*, vol. 1, pt. 1, pp. 327, 329. *Rot. Pat.* 39, *Hen. III.* When Robert de Ros made over to Henry his castle of Werk, the king promised that "nec aliquid agat quod præjudicetur dicto Regi aut regno vel libertatibus suis. *Lit. Pat.* 39, *Hen. III.*

† *Fœd.*, vol. 1, pt. 1, p. 402. For Horton's mission *vide* vol. 2, c. 15, p. 80 and note. The presence of a body of Scottish auxiliaries at the battle of Lewes appears to have been one of the results of his mission. That the "aid" of Alexander was given as "a special favour," not as a feudal obligation, may be gathered from the letter to the Pope in *Fœd.*, vol. 1, pt. 2, p. 907.

a sort of Scutage probably from his English fiefs, was acknowledged, as in the former king's reign, as a special and friendly assistance, entailing no injurious precedent upon the sovereigns of Scotland.* Alexander's usual homage was delayed for six years, until 1278, in which year Edward, writing to the Bishop of Bath and Wells, on the 1st March, upon various matters, mentioned that he had appointed London as the place, and "the Quindene of St. Michael" (or the fortnight after Michaelmas day) as the time for the performance of "unconditional homage," promised by the king of Scots. On the 14th June Alexander received a safe conduct for three months, and he was with Edward when the latter held a Parliament at Gloucester, towards the close of the month, before his departure for France. For some long-forgotten reason, however, it was not until "the Sunday before St. Luke's day," or the 16th of October, that the king of Scotland tendered his homage at Tewkesbury, which Edward postponed accepting until he could reach London, assigning as a reason that "he had not his Council with him," but giving Alexander a letter on the following day under his own hand—"teste meipso apud Coberle 17 Oct"—assuring him that the postponement should be in no way prejudicial to his interests. The homage, accordingly, must have been finally accepted in London after the middle of the month; and from the Scottish version of the transaction, it would appear that upon the 28th of October Alexander tendered it in the following words, "I become your liegeman for all the lands I hold of you in England for which homage is due, saving my own kingdom." On the Bishop of Norwich adding, "and reserving to the king of England the right which he has to homage for your kingdom," the Scottish king replied in a loud voice, "To homage for my kingdom of Scotland none has right, save God alone, and of God only do I hold my kingdom." The Earl of Carrick then performed fealty in the name of his royal master, who again added the reservation, "for the lands which I hold of you in

* *Robertson's Index*, pp. xxi. xxii. *Trivet*, p. 299.

England," and consented to perform all the usual services due from the lands thus held of the English crown. Such is the account contained in the Register of Dunfermlyn; but in the English "Memorandum," preserved in the *Fœdera*, the homage is given as follows, "I become your liegeman against all men"—apparently the vague and "unconditional" homage alluded to in the letter to the bishop—Edward accepting the homage with a reservation of his claim over Scotland, to be set aside for future discussion, and also accepting the Earl of Carrick as the tenderer of fealty in his sovereign's name as "a special favour." The very first sentence, however, in the Memorandum, stating that "in a Parliament held at Westminster *on Michaelmas day*," Alexander performed that homage, which, according to the testimony of Edward himself, was *tendered and postponed nearly three weeks later*, proves it to be the work of no contemporary hand. The last link in the chain of evidence which was to bind the Scottish kingdom to the English crown, is of metal as base as the remainder!*

* *Fœd.*, vol. 1, pt. 1, pp. 554, 563. *Trivet*, p. 299. *Doc. Illust. Hist. Scot. II. Reg. Dunf.*, No. 321. *Cal. Rot. Pat.* 6, *Ed.* 1. The Memorandum in the Dunfermlyn Register tallies with the account of this transaction in the letter of Boniface VIII. (*Fœd.*, p. 907), and as the lands in Tynedale were held by fealty, not by homage, the reservation, "for which homage is due," seems very probable. From the account of Trivet it would appear that some said this homage was performed on the day after the coronation in 1274, whilst others placed it immediately after the parliament held at Gloucester in June 1278. It is evident, therefore, that there was considerable difference of opinion on the subject amongst English authorities, which tells additionally against the Memorandum in the *Fœdera* being a contemporary document. The homage, in fact, was comparatively of slight importance from an English point of view, the claim upon Scotland being raised at this time rather as a form than as a reality—to prevent it lapsing. The kings of England were probably more anxious to evade their actual obligations, than hopeful of establishing their dormant claims. Hence the spirit of the passage in Westminster (*ad an.* 1260-61), that the payment of the Scottish king's expenses was "by special favour," when it was amongst the privileges guaranteed in Richard's charter. The framer of the English Memorandum, unaware of the true date, was evidently misled by the letter to the bishop, mentioning London and *the Quindene of St. Michael*, and accordingly he represented the homage to have been performed "in a parliament held at Westminster *in the Festival of St. Michael*. This is scarcely the blunder of a contemporary, or of any one present on the occasion; and as Edward and "his Council"

One more question remains to be briefly noticed—that of Lothian. That Lothian was originally a portion of the old Bernician kingdom is a fact as unquestionable as that it was either conquered by Malcolm the Second, or ceded to that king by Eadulf Cudel in the earlier part of the eleventh century. When Aldwin and his companions, in the days of Malcolm Ceanmore, endeavoured to establish themselves at Melrose, they were met by a demand from that king "ad quem locus ipse pertinebat" for their fealty, which they refused on ecclesiastical grounds alone. Of the temporal authority of the Scottish king over that province, there seems to have been not the slightest doubt when Simeon wrote; and it may be gathered from the very blunder of Orderic, who represents Malcolm as acknowledging the gift of "the earldom of Lothian" from Edward the Confessor, as the dowry of Margaret on her marriage, that the chroniclers of the twelfth century were ignorant of the tale of its cession in the tenth by Edgar.* It was not before the following century that any chronicler put forward a claim upon Lothian. It was never anything but a chronicler's claim, for the real point in dispute, whenever it was mooted, was the superiority, not over Lothian, but over the whole kingdom of Scotland; and practically, whenever the marches of the two countries are mentioned, the Tweed, and not the Forth, was invariably the boundary. The greater claim of course included the less, and the lesser claim, if persisted in, would have implied a virtual abandonment of the English superiority beyond the Forth. It would have been but a poor dowry for his daughter had William, in return for the promise of Northumberland

would have surely recollected the postponement of the homage tendered at Tewkesbury in the middle of October, I think they must be exonerated from any knowledge of the fabricated Memorandum. It was not upon documents of this description that the true foundation of Edward's superiority over Scotland rested, though they grew into existence to give a colouring of justice to his claims. Mr. Allen (*Vindication*, p. 15, 17, Ap. D) has pointed out the traces of erasures in the Memorandum in question; but in a fabricated document of this description erasures are a matter of secondary importance.

* *Sim. Dun. Hist. Dun.*, l. 3, c. 22. *Ord. Vit. Hist. Ec.*, l. 8, sec. 22.

from the English king, only offered to settle upon Otho of Saxony, and his royal bride, a fief of which Richard was already the Overlord! As it was a monk of St. Albans who, in the thirteenth century, first fabricated the cession of Lothian to Kenneth the Second, to be held in the tenth century by homage as a feudal fief, so it was another monk of St. Albans (if not the same) who added to the tale a further grant of *mansiones*, held by the Scottish kings *to the days of Henry the Second*, a date exactly tallying with the supposed restitution of "the whole county of Lothian," made according to the same authority, Roger of Wendover, at Chester, by Malcolm the Fourth.* Had Lothian been given back in the same

* *Vide* pt. 1, p. 390-2 and notes. The passage respecting the cession of Lothian, in addition to the northern counties, at Chester, is found in the "Imagines Historiarum" of Diceto, but I look upon it as an interpolation, for the following reasons:—The work in question was written by Ralph de Diceto, Dean of St. Paul's during the reigns of Richard and John, beginning from 1147, the year in which Robert de Monte concluded his chronicle, and carrying it on to 1198. A brief summary of the work has been added, either by Diceto or some other hand, under the title of "Capitula Imaginarum," so minute that it was evidently intended to give literally "the headings" of every paragraph in the main work. An idea of this minuteness may be formed by comparing such "headings" as "Hyems maxima," "Nova moneta in Anglia," or "Tussis universam orbem infecit" in the Capitula, with the corresponding paragraphs in the Imagines. Occasionally, however, paragraphs relating to affairs of the greatest importance will be found in the Imagines to which no allusion is made in the Capitula, though such trivial events as "a hard winter" or "a prevalent influenza" are not passed over; and it is very evident that the compiler of the Capitula was not aware of their existence in the body of the work. I am very far from assuming that all these paragraphs are not to be relied upon, but I look upon them as subsequent additions, and not portions of the original work of Diceto. They frequently correspond word for word with passages in Wendover, as in the account of Henry's penance at the shrine of Becket, for example, where Diceto's error of *July* for *June* is exactly repeated in Wendover. According to a paragraph, unnoticed in the Capitula, the treaty by which William purchased his release from captivity was negotiated in the Cotentin, and not at Falaise, only *two* castles being made over to Henry on this occasion, Roxburgh and Berwick—exactly the two which remained in the possession of the English sovereign when William was restored to his original footing of independence. Both these inaccuracies seem to tell of a later hand than Diceto. As no allusion is contained in the Capitula to any paragraph relating to Scotland before 1174, I conclude that all the earlier notices of Scottish affairs are subsequent additions; and amongst the number of the paragraphs unnoticed in the Capitula is the supposed cession of

manner as the three northern counties—and Wendover distinctly includes them all in the same category—it would have become, of course, as integral a portion of England as Northumberland. In return for the fiefs restored at Chester Malcolm only received the Honor of Huntingdon; Richard's charter at Canterbury simply replaced William on the footing of his elder brother; and the lands of which Alexander received seizin after the conclusion of the Baron's war in 1217, were all connected with the same Honor of Huntingdon. It is incumbent, therefore, upon all who maintain the accuracy of Wendover's addition to the other chroniclers, either to point out the period at which Lothian, resigned by Malcolm with the northern counties at Chester, was restored to that king or his successors—or to give some valid and satisfactory reason, why the claims of the Scottish princes upon this province were not included in the compromise, for all *claims upon the northern counties*, at York. It is again a monk of St. Albans, Matthew Paris, who includes Lothian amongst the fiefs for which the homage of the third Alexander was tendered, and accepted, by his father-in-law; but had this been the case, when did the Scottish king either lose or resign the province? For in the Inquisition made at Werk—*upon the Borders*—after Alexander's death, amongst the English fiefs which he had possessed, and which were consequently made over to John Balliol, to be held by the same allegiance, Lothian is certainly not enumerated. The claim, in short, like the earlier cession of the province by Edgar, never appears in any but a St. Albans chronicler, and never seems to have existed beyond the walls of that abbey. Had it been a reality, the sheriffs and the justices

Lothian, at Chester, with the three northern counties. Hence I believe Diceto to have been as ignorant of this transaction as Newbridge, Hoveden, Benedictus Abbas and every other contemporary authority. The whole responsibility of the fabrication rests upon Roger Wendover. When Giraldus Cambrensis wrote, at the opening of the thirteenth century, that the Scots affirmed that the homage of William to Henry, after his capture at Alnwick, was only for Lothian, and not for Scotland, it is very evident that both Giraldus and the Scots were in total ignorance of any previous cession of Lothian by Malcolm IV. (*De Instr. Princ.*, c. 1.)

in itinere would have been appointed by the English sovereign (as they were in Huntingdon), and the whole baronage of the Lothians would have been as much liable to military service to the English crown as the military tenants of the Honor of Huntingdon.*

* *Doc. Illust. Hist. Scot. Illust.* I. The Inquisition held at Werk in 1291 was to report upon all the lands held by Alexander of the English crown at the date of his death. In consequence of this report John Balliol received seizin of the same, to be held by similar allegiance, after paying "a reasonable relief." According to Sir Francis Palgrave (p. v.), Lothian was held of the English crown by the same allegiance as these lands in Tynedale and Penrith. It is singular, if this were the case, that so acute a writer should have thought it unnecessary to explain to his readers the reason why Lothian, held, according to his account, by the same allegiance as the lands mentioned in the Inquisition, was not equally included in it, and regranted in a similar manner to John Balliol, after the payment of "a reasonable relief." As the Inquisition was held "to report on *all the lands* held by Alexander of the English crown," the omission of Lothian, under the supposed circumstances, is remarkable, and in default of explanation, seems rather to tell the other way.

Appendix M.

THE DANELAGE.

The four kingdoms of Northumbria, East Anglia, Mercia, and Wessex, were still existing in Southern Britain at the period when the Northmen laid the earliest foundation of their settlements in that country, Northumbria being the first to suffer from their attacks. The invaders were *Skioldungr*, of the royal race of Seeland, generally known amongst the Irish as *Dugall*, who seized upon York in 867, overthrew the Northumbrian Angles, with immense slaughter, on the Friday before Palm-Sunday, killed both their kings, the "kindly" Osbryht and the "unkindly" Elli, and set up Egbert to reign as an under-king subordinate to their authority. Three years later the royal race of East Anglia was extinguished in the blood of the martyred Edmund, the terrible Ingvar, ancestor of the Dano-Irish Hy Ivar, overrunning and subduing the whole of that kingdom; a third royal line disappearing four years afterwards, when Burhed was driven from Mercia, and his dominions assigned to Ceolwulf "the unwise King's Thegn," to hold as a tributary king like Egbert of Northumbria. After wintering at Repton the *Here*, or Danish army, separated in 875, Halfdan, the brother of Ingvar, going northwards and settling in Northumbria, allotting the southern portion of the old kingdom of Deira amongst his followers. After a reign of five or six years Egbert the under-king appears to have been driven out by his people, who chose Ricseg in his place; the death of the latter, in the year of Halfdan's settlement, coinciding with the reappearance of an Egbert, and seeming to point

to the re-establishment of the tributary of the *Skioldings* —or his son—in his rule over the Northumbrians beyond the Tyne. Two years after the division of the *Here* at Repton, another portion settled in Mercia, confining the tributary Ceolwulf to the south of Watling Street; whilst the remainder under Guthrum, overrunning Wessex, subdued the last of the Anglo-Saxon kingdoms, and forced Alfred to take refuge amongst the marshes of the west. Twelve years had now elapsed since the first appearance of the *Here* in England, its greatest leader was dead, and its character partially changed. Most formidable during its period of union, plundering throughout the summer and living at free quarters during the winter, its losses in that year of battles, 871, were recruited by the arrival of a "mickle Sumerlida," after one of those dubious conflicts in which, according to the Saxon chronicler, the Danes were defeated and pursued during the whole day, and yet retained possession of the field! But the settlements of the Danes in Mercia and Northumbria must have considerably weakened the main body of the *Here*, and, most fortunately for the race of Cerdic, a brother of Halfdan and Ingvar, with a reinforcement apparently from Ireland, was slain on the west coast of Devonshire, with the loss of his Raven standard and 840 men; so that when Alfred mustered the men of Somersetshire "east of the Selwood," of Wiltshire, and of Hampshire—"all who were not driven beyond the sea"—seven weeks after Easter to do battle against the Danes, he brought Guthrum to terms, and the Danish king, welcomed by him as a godson and a friend, quitted Wessex for ever, and soon afterwards settled peaceably with his followers in East Anglia.*

Thus were three out of the four Saxon kingdoms overrun and occupied by the Scandinavians, who though they were gradually brought to acknowledge the authority of the royal line of Wessex, and at a later period readily transferred their allegiance to Canute the *Skiolding*, were treated in some respects as a privileged people, still

* *Chron. Sax.* 866 to 880. *An.* 875-6. *Hist. Dun. Twysden*, p. 14, *Ult.* 866, 870. *Sim. Dun.* 867, 872-3, *do. Hist. St. Cuth.*, p. 70.

retaining at the Conquest their peculiar laws and customs with the sole exception of the *Frith-borh*, or *Visnet*, which they had adopted at the suggestion, not by the command, of Edgar.* Their settlements in Northumbria and Mercia seem to have been carried out upon the true northern, and apparently earlier system, and as soon as the *Here* ceased to be a compact and migratory body, the tributary king was confined to one portion of the conquered territory, whilst the remainder was allotted amongst the leading Danes and their followers. Deira was the district thus portioned out amongst the Northmen who peopled the ancient kingdom of Northumbria, whilst Bernicia and the territory of St. Cuthbert, between Tees and Tyne, seem to have been still occupied by a Saxon proprietary, to a certain extent in a dependant condition, as exemplified in the *Wergilds* of the *Northern Leod*, in which the *Holdr* is reckoned at twice the value of the *Thegn*.† A sure and certain test of a colonization of this description is afforded by the topography of the districts thus allotted, the *caster* and the *By* invariably marking the presence of the Northmen, not only as a dominant, but as an actual occupying class; and as only four *Bys* are to be found to the northward of the Tees, whilst the *chester* is traceable from Tees to Tweed, and in a few instances even beyond that river, it may be safely assumed that though the

* *Edg. Sup.* 12.

† Compare Ap. E, *Wergilds*. The ancient territory of St. Cuthbert was principally in the Lothians, and in that portion of the modern county of Durham lying to the northward of Northumberland. Ceolwulf gave some lands between the Line and the Coquet, and half way between the Alne and the Coquet, to the Saint, but it was Egred, whose episcopate lasted from 830 to 846, who first added to the See some of the lands between the Tees and the Wear—though the kings Osbryht and Elli seem to have disputed his right to do so, and the whole property was lost in the invasion of the *Skioldings*. The lands in this quarter—the donation of Egred—appear to have been bought back from the Danes, but they were again confiscated by Reginald Hy Ivar, and there is no account of the manner in which they finally became the property of the See, which was first located at Durham in 995. It is probable that the tale of Guthred's donation was subsequently fabricated to furnish some sort of title to the property. The lands beyond the Tweed were never recovered, showing how thoroughly the Lothians were in the absolute possession of the Scottish sovereigns. *Sim. Dun. ad an.* 854. *Hist. Dun.*, l. 2, c. 5, 6, and *Hist. St. Cuth.*

territory of St. Cuthbert was divided by Reginald Hy Ivar between his followers Skuli and Olaf, the Tees was the northern boundary of the actual settlement, and that Deira alone was "roped out" amongst the Danes. Wherever the northern system was thoroughly carried out, the lands thus allotted amongst the Odallers were divided into three separate districts or *Trythings*, and as the two great tributary states of Saxon Mercia and Saxon Northumbria appear to have been left upon the opposite frontiers of the districts actually occupied by the Northmen—partly, perhaps, as bulwarks against attack, partly as affording room for future expansion—so it would seem as if, for similar purposes, a certain portion of land originally occupied by a dependant population (*gafol*-land rather than *odal*-land) was left upon the *marches* of each separate community whose union made up the Northern Leod. Lincolnshire and Yorkshire may be regarded as the districts most thoroughly settled and colonized by the Northmen, each being divided into *Trythings* at the period of the Domesday survey.* The Lincolnshire Trythings ceased upon the borders of the forest district of Kesteven —Coed-Stefne, the remains of the old *Caer-Lind Coed*, or Lincoln forest—which was included with Holland in South Lincoln; and though the presence of the *By* in Kesteven shows a wide encroachment of the Lincolnshire Danes beyond the marches of the old Trythings, it is vain to search for that mark of the presence of a pure Scandinavian population amidst the marshy fens of Holland.

* *Domesday*, vol. I, p. 298 B, 336 B. The *Trything* is surely still traceable in the earliest settled districts of Saxon England — Kent and Sussex. East Kent at the date of Domesday contained the two divisions of St. Augustine's Lathe (*Leod*)—Borh-wara Lest and Estre-Lest — Lymne-wara Lathe, and Wye-wara Lathe; West Kent the Lathes of Sutton, Aylesford, and Middleton. The six *Rapes* of Sussex—*Hrepps* or "roped out" districts—represent the threefold division of East and West Sussex. Both kingdoms were probably settled *allodially*, and traces of allodial tenure long remained in Kent, but they were eradicated from Sussex by Ceadwalla. Elsewhere in Anglo-Saxon England the allodial proprietor is only traceable in the *Ætheling*, surrounded by his *Gesiths* and *Geneats*. There is no Anglo-Saxon word to express the *Franc-alleu Roturier*, or the *Land-agende Odal-Bonder* of the Danelage.

As the unallotted land beyond the Lincolnshire Trythings was on the southern *mark*, so in the case of the Yorkshire Danes it was "westward over the mountains;" and, accordingly, though the *Hundred* was introduced into Lancashire as a district under the authority of the Yorkshire Danes when they adopted the institution of the *Frith-borh*, and Manchester is included by the Saxon chronicler in Northumbria, the *caster* is only traceable in one instance, and the *By* only occurs upon the western coasts, and may be ascribed, as will soon be shown, to a different population than the Odallers of the Yorkshire Trythings. It was in this western locality that the earlier population of the country appears to have sought a refuge at the time of the first settlement of the Northmen, for Addingham in Wharfdale was long the seat of the See of York, and when Edred slew Eardulf, the ancestor of the Bamborough family, he sought his enemy, not in the north-eastern districts beyond the Tyne, but "westward over the mountains."*

A similar course would probably have been carried out in the other part of Mercia had the Scandinavians in that quarter been able to effect their colonization as thoroughly as their kindred beyond the Trent and Humber. Leicestershire was the heart of this settlement, the *Bys* spreading out from this county into the neighbouring shires of Derby, Nottingham, and Northampton, and occasionally into Warwickshire as far as "six miles beyond Watling Street;" but the *Trything* was never thoroughly established, and the *Cester*—sometimes the *Chester*—is found instead of the harder form of *Caster*. Saxon Mercia soon ceased to obey Ceolwulf, and was given by Alfred to his son-in-law, Ealdorman Ethelred, probably in 886, when "all Engel-cyn" not under the dominion of the Danes turned to the king of Wessex, and when he rebuilt London, committing it also to the charge of Ethelred.†

The "Eorls, Holdas, and Here" of Bedford, Hunting-

* *Chron. Sax.* 923. *Sim. Dun. Twysden*, pp. 74, 79. Lancashire was included at the date of Domesday partly in Yorkshire partly in Cheshire. *Ellis' Introd.*, vol. 2, p. 429, note 1.

† *Chron. Sax.* 886.

don, and Cambridge, submitted to Edward as independent and isolated communities, and the East Anglian representatives of Guthrum's Danes appear to have renewed about the same time under *Eorls*, or on a dependant footing, the convention ratified between their first king and Alfred. After the division of England by Canute into four great dukedoms—for the *Jarldom* must be carefully distinguished from the *Earldom* subsequent to the Conquest—Cambridgeshire, Essex, and the North and South *Fylke* were included in the *Jarldom* of East Anglia, and the customs of this portion of the Danelage differed in some respects from those of the *Norwicenses* or Northern Danes. The convention between Alfred and Guthrum placed the Saxon and the Dane from the first upon an equal footing—the *Hold* was never ranked at twice the value of the *Thegn*—and in Edward's time the East Anglians appear to have adopted the regular Saxon assessment of Twelfhynd and Twyhynd (unacknowledged apparently amongst their northern kindred before the time of Canute), and probably other Saxon customs, for the old "major emendatio forisfacturæ Saxonum" was current amongst them "from their affinity with the Saxons."* It may be inferred, therefore, that Guthrum's Danes did not, like their northern kindred, drive out a portion of the earlier population and establish themselves as a superior class above the remainder, but settled amongst the original East Anglians on a footing of comparative equality, a supposition which is remarkably borne out by the topography of the eastern counties, where the *Chester* is still prevalent, and except in one particular quarter scarcely a *By* is to be found.† The Northern Danes evidently resembled the Franks in Gaul, eradicating every vestige of proprietary right in the districts actually colonized, and estimating themselves at twice the value of the dependant proprietary who were permitted to exist elsewhere on a subordinate footing;

* *Chron. Sax.* 921-1017. *Alf. et Guth. Ed. et Guth. Leg. Ed. Conf.* xxxiii.

† The *Bys* in Norfolk and Suffolk are all grouped together around the mouth of the Yare, as if, true to their national instinct, the Northmen had reclaimed and settled the lands about that river in the neighbourhood of their beloved sea.

and as a German dialect still lingers in many parts of France which were thus colonized by the Franks, so the *Caster* and the *By* are still found amongst the descendants of the Northern Danes. The settlement of the Eastern Danes resembled rather that of the Burgundians or of the Visigoths, and as modern French is the dialect of Burgundian France and Burgundian Switzerland, so no trace of the Northman lingers upon the topography of the eastern counties, and, with very few exceptions, no *By* marks the spot where the Danish *Bu-ander* established his separate home. The Eastern Danes must have shared with the earlier population the *Vills* and hamlets named by the Saxon colonists of an earlier age, much as the Burgundian, or the Visigoth, was quartered upon the Roman population; and in a similar manner must have gradually blended with their early *Hospites*. In all other respects the customs of Northern and Eastern Danelage were identical, and, after the complete recognition of the authority of the English kings, the representatives of the earlier *Eorls* and *Holdas* were converted into "King's Thegns"—*Liberales* or nobility—whilst the lesser proprietary, the Odal-Bonder, or Land-agende class, through the universal prevalence of "Hlaford-socn," were obliged to "commend themselves to a lord," and were thus converted into "Socmen."

There is yet another district in the north in which the presence of a considerable body of Scandinavian settlers, though only dimly pointed out in history, is very plainly traceable in the topography at the present day. It is more than doubtful whether after the conquests of Egfrid and other Northumbrian kings in the seventh and eighth centuries, any part of the wild moorland district between the Solway and the Lune ever again fell under the dominion of a Cumbro-British prince; and when Edmund harried "Cumbra-land" in 945, and made it over to Malcolm of Scotland, it was his object to obtain an active ally against the Northmen rather than against the remaining *Cymric* population of this quarter. The Northmen, however, held their ground, the united efforts of Saxon,

Scot, and Briton, in 952, failing to eject the intruders; and the *Caster* and the *By* in Cumberland and Westmoreland tell at the present day of a considerable colonization amidst the bleak moorlands of the West, unconnected apparently with the Danes of the Yorkshire Trythings. In Lancashire, again, the *Caster* and the *By* are found to the northward of the Lune, and a few *Bys* scattered along the western coast point to Ireland, or the Isle of Man, rather than to Yorkshire, as the original home of the colonists; whilst beyond the Solway not a few *Bys* between the Annan and the Esk mark the encroachments of the Northmen in the eastern division of modern Dumfries-shire, a few settlers penetrating into Galloway.*

* Cannoby, Dunnaby, Wyseby, Perceby, Middleby, Lockerby, and Sibalby occur in Dumfries-shire, and Sorby and Appleby in Wigtonshire. To his Saxon ancestry the modern Englishman may trace his steady perseverance, integrity of purpose, and a certain predilection for rank and high birth; whilst to his Scandinavian forefathers he owes his attachment to the sea, his fondness for horses, and his love of liberty. The Anglo-Saxons were not a sea-faring people; *scyp-fyrd* is never mentioned in their earlier laws, and only once before the days of Alfred did they meet the Northman on his native element (*Chron. Sax.* 851). It was that great king who first created an Anglo-Saxon navy, building his ships after a model of his own "neither Danish nor Frison," so that there was evidently no Anglo-Saxon model before his time; and the navy thus constructed he manned principally with Frieslanders (*Chron. Sax.* 897). But by northern law the touch of oar or sail conferred liberty on the *Thrall*, and the association of freedom with the sea has never died out amongst the maritime population of England. No sooner did the Norseman leave his ship than he was "*ge-horsed;*" he sometimes crossed the sea with his horse, and the Norman chivalry was unsurpassed in Europe; but when Ralph, the Norman Earl of Hereford, mounted his Saxon followers to fight the Welsh, "before there was a spear thrown the English fled, *because they were on horses.*" (*Chron. Sax.* 866, 881, 885, 891, 893, 1055.) Howden and Horncastle, in the heart of the ancient Danelage, are still the greatest horse-fairs in England. Nothing shows more clearly the free tendency of the northern institutions than the total absence of serfdom from all the districts thoroughly settled by the Northmen. Throughout the whole of Danelage entered in the Domesday Survey, whether north or south of Humber, there were enumerated 6497 serfs, of whom 4250 were found in eastern Danelage, where the customs of the earlier Anglo-Saxons had been but little interfered with; 2231 were in Bedfordshire, Hertfordshire, Northamptonshire, and Leicestershire, bordering upon Saxon Mercia; 46 in the united shires of Nottingham and Derby, and none at all elsewhere. The serf was replaced in the northern system by the free labourer. In Norway, at the present time, the *Houseman*, or farm-labourer, usually holds a cottage and a plot of land, generally situated upon *the borders* of the Bonder's property,

The Danes never obeyed Alfred: it was the work of the great king's life to vindicate the independence of Wessex and unite the shattered fragments of the other Saxon kingdoms to his own. His daughter first turned the tide of conquest against the Scandinavians, and the Yorkshiremen, alarmed at her success, forgetting their impatience of kingly rule, seem to have turned for assistance to the representative of the old line of Skioldings, Reginald Hy Ivar, who at this very period landed from Ireland and established his power over Northumbria. On the death of Sitric, Reginald's brother and successor, Athelstan, resisted the pretensions of the third brother Godfrey, who was forced to content himself with the royalty of Dublin, and Northumbria for the first time fell under the direct dominion of an English sovereign. The pretensions of Olave Sitricson, who married a daughter of Constantine the Second, and of his cousins Olave and Reginald, sons of Godfrey, kept Northumbria, and sometimes the whole of Danelage, in a continual state of revolt against the English kings until the middle of the tenth

at a stated rent, for a term of two lives (his own and his wife's in ordinary cases), furnishing in return a certain number of days' work at a fixed rate of wages, including provisions. He can resign his holding and leave at any time by giving six months' notice, but he cannot be removed as long as he renders his stipulated rent and service. His eldest son usually succeeds him by a sort of customary inheritance, which, in some districts, amounts to a species of tenant-right. This is nothing more than the development of the *Bordarius*, or free labourer, so often met with in Domesday, and a tenure much resembling the *tenant-right* which, in the time of Lambarde, was the substitute for the western and southern *copyhold* throughout the north. As the name of *Bordarius* was brought in by the Normans, the free labourer had been introduced in that quarter also, a greater degree of freedom, indeed, existing in that duchy than in any other part of France. "In the other provinces," says Houard, *Anc. Lois de France*, vol. 1, p. 196, "the protection of a lord (*hlaford-socn*) was necessary to secure the commonalty against the loss of liberty, whilst in Normandy every man and every landed possession were by law free, the duke alone having immediate jurisdiction over all his subjects; and it stood in the power of no lord to alter the condition of the freeman and his possessions; whilst in the oldest known charter in Normandy, of the date of 1315, it was provided that the Normans who were independent of a lord were only bound to render to the sovereign certain fixed services and imposts." *Lappenberg Eng. under Ang.-Nor. kings* (*Thorpe*), p. 95-6. *Hlaford-socn*, or Commendation, was therefore a thoroughly Anglo-Saxon institution, borrowed, probably, from imperial law.

century; though the allegiance of the Northmen was sometimes claimed by Eric Blodæxe, a son of Harald Harfager, and a member of the *Ingling* race, which gave kings to Norway after they had been driven from Sweden by the rival race of the Skioldings. Olave Sitricson at length retired to Dublin, and upon the death of Eric, who is said to have been slain on Stanemoor by Magnus Haraldson through the treachery of Osulf of Bamborough, Northumbria was committed to the charge of the same Osulf by Edred.

No kings are traceable beyond the Tyne after Egbert, who is last mentioned in 883, but in very suspicious company. Thirty years afterwards occurred the death of Eadulf, described by the Ulster Annalist as "king of the Northern Saxons," by Simeon as "dilectus Alfredi," and by Æthelward as "qui præerat actori oppidi Bebbanburgh condicti."* He was probably the representative of the

* *Sim. Dun.* 883. *An. Ult.* 913. *Hist. St. Cuth.* (*Twysden*), p. 74. *Ethelw.* 913. According to Simeon, after the departure of Halfdan St. Cuthbert appeared in a vision to Abbot Edred, bidding him warn the heathen Danes, if they valued his favour, to repurchase a boy, Guthred son of Hardicanute by name, whom they had sold as a slave to a widow; to choose him for their king "at the sixth hour," and at the ninth "to invest him with the insignia of his rank" on Oswald's Dun. The king thus chosen was then to testify his gratitude, by bestowing upon his saintly benefactor all the lands between Tyne and Wear—or, according to a still more liberal version of the legend, all between Tyne and Tees; by proclaiming an immunity of thirty-seven days to all who fled for refuge to St. Cuthbert's shrine; and by inflicting for a breach of "church-grith" the same fine of 96 *pounds* which was levied for a breach of "king's-grith." All fell out of course as the saint desired; the people "tam barbari quam indigenæ" chose Guthred with a wonderful unanimity, considering that the revered relics of the holy Cuthbert were wandering about from place to place to escape these very pagans; Alfred confirmed the grant of *sac*, *soc*, *infangthief* and other royal privileges, unknown at that time amongst a people who ignored his authority; and, as a warning for all sacrilegious intruders upon the territory thus set apart by heathens for the Church, a body of luckless Scots were miraculously engulphed in the yawning earth! The *sac*, *soc*, and *infangthief*, above all the fine of 96 *pounds*, mark this tale as a fabrication of the Anglo-Norman period. The fine for a breach of the king's peace in Danelage was "eighteen hundreds" of *ores*, twelve to the king, six to the earl. The Saxons reckoned in *scillings*, the Danes in *ores*, the Normans in *pounds*, roughly estimating 200 Wessex *scillings* at 4 pounds, and consequently 100 *ores* at twice that sum; though in Danelage the "hundred" was probably "a long hundred" of "ores of sixteen," for 120 ores of 16 pence are equal to exactly 8 pounds.

old Bernician race, and his sons Aldred of Bamborough, who fought against Reginald at Corbridge, and Uchtred, were frequent attendants at the court of Athelstan. Hence it may be inferred that the allegiance of the Northumbrian Saxons beyond the Tyne was transferred at the earliest opportunity to the sole remaining king of Saxon origin—perhaps even as early as 886 when "all *Engel-cyn* turned to Alfred"—and from this period this portion of the old Bernician kingdom long continued to be the solitary example in England of a hereditary *Ealdordom*. The signature of Aldred is missed after 931, but Uchtred survived at least until 946, and perhaps three years longer. Osulf "of Bamborough" next appears as a *Heah Gerefa*, and *Dux*, evidently a member of the same family to whose charge the whole province was committed by Edred in 954. In 966 Oslac "the great Eorl" was appointed by Edgar to rule the Anglo-Danes, and as the authority of Waltheof, who succeeded Osulf, is expressly limited to Northumbria beyond the Tyne, it is evident that the authority of the Bamborough family was confined to their hereditary province until Ethelred, in 1006, conferred upon Uchtred, the son of

Hence "eighteen hundreds" were equivalent to 144 pounds, and the fine of 96 was the king's share of the mulct, the remaining 48 answering to the "tertius denarius comitis." But Durham in the Norman era was a "county Palatine," and the bishop in right of the privileges of his "Regality" received the royal portion of 96 pounds—as the saint had miraculously foreseen. The good St. Cuthbert, however, would probably have calculated in *sceattas* or in *stycas*, perhaps in *scillings:* had an Anglo-Dane handed down the story he would have reckoned the mulct in *ores;* but the fabricator of the legend was not only familiar with the Norman *pound*, but with the division of the fine between the king and the "king's earl," the latter an official of whom the Yorkshire Danes were certainly ignorant before 954, and probably until the days of Canute; for they were "the laws of Canute" for which the men of northern and central Danelage stipulated in 1065. (*Sax. Chron. ad an.*) The compiler of Simeon's earlier chronicle appears to have been ignorant of the existence of this Guthred, whose name is inserted between the lines of the MS. at the close of 883 (*Mon. Hist. Brit.*, vol. 1, p. 683, note A); and as his reign is supposed to have lasted twelve years, coinciding exactly with the length of the historical Guthrum's reign, some confusion may have arisen between the two. The legend was evidently fabricated to "give a title" to the lands of St. Cuthbert. (*Sim. Dun. Hist. Dun.*, l. 2, c. 13. *Hist. St. Cuth.*, p. 70, 71 (*Twysden*). *Hist. Reg.* 883.)

Waltheof, the *Eorldom* of the Yorkshire Danes, in addition to his patrimonial *Ealdordom* beyond the Tyne, for his great services against the Scots.*

Eorl Oslac was banished in 975, and his immediate successors in the government of the Anglo-Danes can only be ascertained by conjecture. From the year 994 a certain Œlfhelm, who previously figures in the charters as *Minister*, or King's Thegn, signs himself *Dux*, and is a very constant attendant on the court until his death in 1006. He attests one charter (No. 698) as *Nordanhymbrensium provinciarum Dux*, though Waltheof was at this period unquestionably an Ealdorman beyond the Tyne, his signature in that capacity being appended to the first charter in which Œlfhelm appears as Dux; and as the death of the latter in 1006 coincides exactly with the period of Uchtred's elevation to the *Eorldom*, it may be conjectured that for the last twelve years of his life Œlfhelm ruled over the Yorkshire Danes. In 993, the year preceding his first appearance as Dux, Bamborough was plundered and destroyed, apparently by Olaf Tryggveson, and to oppose him an army was collected, not by Eorl or Ealdorman, but by three *Heretogas*, Godwin, Frena, and Frithegist, who unfortunately led the flight instead of the onset; and it may have been to curb the disaffection of the Yorkshire Danes that Œlfhelm, a Saxon by his name, was placed in authority over them.†

Between the banishment of Oslac in 975 and the elevation of Œlfhelm in 994, a certain Thored Dux, whose father, Gunnar Dux, attested one of Athelstan's charters, is a frequent attendant upon Ethelred between 979 and 988. He was the "Thored Eorl" associated with Ælfric in 992, and as his name never again appears in charter or chronicle, he may have shared in the treachery of Ælfric or suffered from it. As his title of *Eorl* implies that he was an Anglo-Dane, he may have

* *Hist. St. Cuth.*, p. 74. *Cod. Dip. Sax.* 357, 408. *Chron. Sax.* 954, 966. *Sim. Dun. ad an.* 1072, and *De Obs. Dun.*, p. 80 (*Twysden*). For the error in the date of the latter, *vide* vol. 1, c. 4, p. 92, note.

† *Chron. Sax.* 975, 993, 1006. *Cod. Dip. Sax.* 624, 641, 654, 658, and from 687 to 714.

held the *Eorldom* after the exile of Oslac; but this is entirely a matter of conjecture.*

Uchtred the son of Waltheof was slain in the time of Canute, and his brother Eadulf Cudel only succeeded to the hereditary dominions beyond the Tyne; for the great *Jarldom* of Northumbria, which now reached to Watling Street, was conferred upon Eric, a constant witness to the charters of Canute until 1023; and Uchtred's son Aldred is expressly stated to have succeeded, on the death of Eadulf, to Northumbria beyond the Tyne.† It was Eadulf Cudel who is stated to have made over the whole of his ancestral dominions beyond the Tweed to Malcolm II., including a considerable portion of the ancient territory of St. Cuthbert; and this cession—or conquest—together with the absence of the territorial division of the Hundred beyond the Tees, points to the semi-independent position of these northern Ealdormen, or else to the great weakness of the Saxon monarchy on the northern frontier. Aldred was succeeded by his brother, who, like his uncle, bore the name Eadulf; and on his death by the hand of Siward, the latter—who, if a charter may be relied upon in which his name appears as Siward *Dux*, was probably Eorl of the Anglo-Danes‡—claimed and exercised authority in right of his wife, the daughter of Aldred, over the whole province now limited to the Tweed. On the death of Siward the entire province seems to have been conferred upon a member of the all-powerful family of Godwin, Tosti, and subsequently upon Morkar, who made over the northern portion between Tyne and Tweed, which may now be called *Northumberland*, to Osulf, a son of the second Eadulf. The different provinces of the ancient Northumbrian kingdom were never again re-united, the Anglo-Saxon portion, or Northumberland, being held after the Conquest successively by Copsi, a partisan of Tosti; Cospatric, the ancestor of the Earls of March; Waltheof, the son of Siward; Bishop Walcher of Durham, Alberic,

* *Chron. Sax.* 966, 992. *Cod. Dip. Sax.* from 621 to 663.

† *Sim. Dun. de Obs. Dun.* (*Twysden*), p. 81.

‡ *Cod. Dip. Sax.* 749.

and finally by Robert de Mowbray, after whose forfeiture, in 1095, it was retained in the crown, whilst the hereditary claims of Waltheof, the last of the old race who held the fief, were transmitted through his daughter Matilda to the St. Liz, subsequently created Earls of Northampton, and to the royal family of Scotland.*

* *Sim. Dun. ad an.* 1072.

Appendix N.

THANES.

When William the Lion enforced the payment of tithes throughout the diocese of Moray, he ordered that "if a Villein will not pay his tithes, let the Thane under whom he is placed, or his lord if he has one, distrain," etc.; from which it may be gathered that the Thane, though placed in authority over the Villeins, was at that time not strictly speaking their lord—not the "freeholder" of the lands tilled by the Villeins for whom he was responsible. This is further shown by a charter of David II., granting to Sir Walter Lesly the fee and reversion of the Thanages of Kincardine, Aberluthnot, and Fettercairn, of which the freehold—*liberum tenementum*—belonged to William, Earl of Sutherland. The office of Thane, therefore, was not necessarily identical with the proprietorship of the lands over which authority was exercised, and the Thane is often found in connection with *fee-farmers*, or hereditary tenants by rent instead of by military service, with whom indeed he has been occasionally confounded; though the Thane who ranked in the olden time with an earl's son, or a king's grandson, could scarcely have been on a footing with a *Rusticus nativus*, or "inborn" *churl*. In the grant of Kynmyly, Alexander II. made over to the See of Moray, for an annual rent of ten pounds, "totam terram præposituræ nostre de Kynmyly ad feodo-firmam in perpetuum," excepting the lands of Markinch, which were the property of the burgh of Inverness, and all the tofts and lands which, on the day of the concession, were possessed "baronibus, vel militibus, vel aliis probis hominibus terræ

nostræ infra divisas præfate prepositure;" reserving also to the crown all the fisheries, excepting one which had been leased by "piscarii firmarii" and the Thanes, and all the "placita et querele," except those belonging to the Thane. As the rights of the Frank-tenantry and the prerogatives of the crown were reserved, but the rights of the Thane passed with the rest of the grant, it may be gathered that the See of Moray was placed in the position of the Thane, who would thus have enjoyed a certain portion of the *Prepositura* as a property in fee-farm, with a certain portion of the royal rights and dues, his prerogatives as "capitaneus" over the fee-farmers and "native-men" on the royal property. He who enjoyed the freehold (in this case retained in the crown) received the rent, and it was in the power of the sovereign to make over the freehold, or right of receiving the rent, to any one he chose: but if the Thane had acquired hereditary right by the usual course of descent, or, after the reign of David, by charter, he exercised his rights and prerogatives undisturbed by any change of overlord.*

The record made at Perth in the reign of Alexander II., "de illis qui ab exercitu abfuerunt,"† after adjudging to the king the fines of any earl whose Thanes had failed in their attendance on "the hosting," goes on to say, "de terris Episcoporum, Abbatum, Baronum, Militum, *Thanorum* qui de Rege tenent," thus implying that the tenants *in capite* at that period, besides Earls, Bishops, and Abbots, were Barons, Knights, and *Thanes;* whilst, as the fine levied on every absent *Ogtiern*—lesser lord or sub-tenant—and *Rusticus*, was shared between the king and the *Knight or Thane*, between the suzerain and the overlord, it is evident that there were *two* distinct tenures very generally prevalent about the middle of the thirteenth century in Scotland, the tenants *in capite* holding either

* *Reg. Morav.* 5, 34, 40. *Robertson's Index*, p. 89, No. 242. From the wording of the passage, "theynus sub quo rusticus sit, vel dominus si dominum habuerit," it would seem as if there were more "theyni" than "domini" in Moray in the days of William. More tenants by Scottish than by military service.

† *Act. Parl. Scot.* vi. *Stat. Alex. II.*, sec. 2.

by the feudal tie of *knight-service*, or by the older tenure of *thanage*. "In some Annals," says Fordun, writing four or five generations after the time of "the Record made at Perth," "Crynyn is mentioned through the fault of the transcriber as Abbot of Dull, when *Abthane* of Dull would have been the more correct designation. Abthane is derived from *Abba*, father, and *Thana* responsible or numbering; hence the Abthane was, as it were, the head of the Thanes, or their lord under the king, to whom they were bound to answer every year for *the farms and rents due to the king*. The Abthane had to number the royal rents and crown dues, doing the duty of a Steward or Chamberlain. . . . The kings of old used to grant more or less land to their followers, a thanage, or part of a province, in fee-farm—for at that time nearly all the kingdom was divided into thanages—giving to every one at-will; to farmers, for instance, to hold from year to year; to freemen, and men of gentle birth, for a term of ten or twenty years, or for life, with remainder to one or two heirs; and to a few, such as knights, thanes, or magnates, in perpetuity, though not so freely but that they were bound *to pay a stated annual rent to the king*."* For all this description Chalmers abuses Fordun as "a fabulist," but in the reigns of David Bruce and Robert II., when the historian wrote, the Thanage was a known tenure; it was granted and held, and it is most improbable that Fordun should have written gross falsehoods about

* *Ford.*, l. 4, c. 43, 48. With due allowance for the feudal ideas of Fordun, I see no reason to question the existence of tenures resembling those he describes. The first is simply a yearly tenancy-at-will, as it is described by the chronicler of Lanercost (*ad an.* 1248). The second is the *tack* or terminable lease, the third the hereditary grant, answering respectively to the *benefice* and the *feud*. The Gaelic tenure, however, conferred originally *office over land* rather than the land itself, and the *duchas* or freehold of the Thane was his office and its prerogatives, extending in early times over a far wider district than the portion of land actually attached to it. The freehold of the *land* might be granted away, as indeed it often was, but of the office and its prerogatives, if hereditary, the Thane could not be deprived, as is evident from the reservation in the grant to Sir Walter Lesly, "of the rights of the heirs of the original Thanes," if they appeared and could prove their claims (*Robertson's Index*, p. 87, No. 220). Latterly the Thanage must have often become a sort of *rent-charge*.

the character of an existing tenure, however he may have been mistaken when indulging in speculations about its origin, or on other points about which later theorists are not necessarily infallible. Even his error about the meaning of the word *Thane* is the blunder of a writer ignorant of its real acceptation, and giving it the interpretation of "a responsible and numbering official" from a familiarity with the actual duties of the office; and I see little difficulty in recognizing the Thane from his description as a royal official responsible for the rents and revenues of a Thanage, or portion of crown-land placed under his charge, which, if possessed uninterruptedly for three generations in early times, or confirmed by charter in a later age, was held of the king in hereditary fee-farm, or payment of rent, and by "Scottish" instead of knight-service.

Under the disguise of *Thanus*—whether a Latinized legal appellation resulting from the prevalence of Lothian law, or merely a corruption of the Gaelic *Tighern*—it is easy to detect the *Maor*, or counterpart of the *Graphio* and *Gerefa*, a well-known official amongst the Celts who with the Welsh, and probably also with the Gael, exercised a joint authority with the Cynghellwr or Brehon over the Fiscal lands, or districts retained in immediate dependence upon the crown. Only two classes can be distinguished amongst the *Saor*-clans, or free tribes, enumerated in "the Book of Rights," a work presenting a very fair picture of a purely Gaelic state of society, the one untaxed, holding their *duchas*-lands by "right of blood," or in virtue of a real, or supposed, consanguinity with the royal race; whilst the other class was liable to a certain settled tribute—*cios* or *can*—resembling in many respects the *clientes* of the greater confederacies of an earlier age.* The gradual rise of a third class may be

* Thus the various subdivisions of the Hy Nial and of the Eoganachts were the *Sliocht*—the *Leuchte* or *Leudes*—of the principal kings of the north and south of Ireland, holding their *duchas*-lands untaxed in right of their origin. *Cios* and *Can* long survived in Scotland as Land-*cess* and *Kane;* and though the words are often used indiscriminately they seem to have answered, strictly speaking, to the Norwegian *Thegn-gild*, land or noble tax, and *Hef-gild*, poll or ignoble tax. Allowing for the usual change of *þ* into *c*

traced amongst the Germans, a class as unknown, apparently, amongst the Scandinavians as amongst the Welsh and Gaelic Celts of Britain and Ireland, and originating from a Roman rather than from a Germanic source. In very early times the tie of blood was in a certain sense of a religious nature, he who was not of "the kin" being unable either to administer or participate in the sacred rites. It was, perhaps, from a feeling of this description that in settled communities a connection of a peculiar nature was generally necessary for the alien, like that which, amongst the Greeks, bound the *Metic* to his *Prostates*—literally, the man who had *changed his home*, thereby forfeiting the rights of kin or vicinity, to the man who *stood before him*—and when a slave, who was a mere chattel belonging to his master, was liberated and became a man with social rights, he was placed upon the footing of the Alien, he and his descendants requiring a *Prostates*, or "man to stand before them," until, in most cases, the wide-spread custom of the "three generations" ranked the third in descent (or fourth according to the method of reckoning) as a man with full proprietary right, or hereditary birthright. To a similar source the *Clientela* amongst the Romans may probably be traced, the *Cliens* being originally a *Libertus* who required a *Patronus*, the connection remaining in force at least until the necessary *cognatio* was established, and the son of the *Libertinus* became *Liber*.* As civilization advanced, entailing in its progress many a social difficulty unknown to a ruder and unsettled state of society, the lesser Freeman was often glad to seek the support of a greater, and, without entirely forfeiting his social rights, he was admitted to the same "paternal" protection as the Libertus, with this difference,

amongst the Gael, *Can* seems traceable to the same root as Ποινη and *Pœna*.

* I refer of course to the period alluded to by Suetonius, in or before the days of Appius Claudius. The historical Roman *cognatio* was of *six* descents, but there had evidently been a period in which it was completed in *three*, as in the old German *Vier Anen*. The change points to two different phases of society; an earlier, in which *noble* was synonymous with *free*, and a later, in which the noble stood out from the free, as the free classes from the servile.

however, that the act was voluntary on the part of the former, whilst with the latter it was obligatory. Free clientage was, as it were, the perpetuation of the condition of the Libertus and Libertinus, forming an intermediate state between absolute freedom and absolute servitude; and the admission of the Freeman, who retained his property and social rights, to this footing, marks the entrance upon a different phase of the social system, in which one freeman might become dependant upon another without forfeiting either liberty or property; whilst the necessity of assuming the "Gentile name" of the patron displays the force amongst the ancient Romans of that tie of blood which required the client to be enrolled theoretically amongst *the kin.*

When the Franks first occupied the Roman provinces they were a confederacy under many leaders, not a people united under one king, and their division of the conquered territory appears to have been carried out according to the earlier, and strictly allodial, theory, assigning to every freeman an allotment, not necessarily of a permanent character, and reserving the remainder as public land. The freeman, incapable in his character of *Leud* of service or dependance upon another, and transmitting his right to an untaxed allotment as an inalienable birthright to his heirs; the royal *Gasind,* dependant originally upon the royal bounty for his support, and bequeathing to his descendants an inheritance of privilege and "noble service;" the Freedman, and the Slave, were characters more or less familiar amongst the early Germans; but the dependance of one freeholder upon another amongst the ruling race was totally unknown at that period, and from the difference in the condition of the *Denarialis* and the *Tabularius* it may be gathered that this dependance—the relation of the free client to his patron—was one of the numerous adaptations of Roman law which lay at the root of the feudal system. The Denarialis, freed by old Frank law, or "ancient custom," was brought before the king or his representative, the king being the heir if the race died out before the third generation—"hereditatem in

suâ generatione non haberet (Denarialis) antequam in tertiam generationem pervenisset;" and as the king, after the time of Chlovis, stood in the place of the representative of the earlier community, *Leod*, or *Folk*, it may be gathered that the right of a Libertus to an allotment reverted to the common fund, out of which it had been originally taken, if the race died out before acquiring "hereditary right," or the power of inheriting and bequeathing property. So, also, amongst the Lombards in the seventh century; if the Libertus was *Amund* as well as *Fulfreal*, the *Curia Regis* representing the earlier community was his heir, though the Roman principle was by this time also acknowledged, and the *Mund*, or patronage, might be retained by the liberator. The peculiar relationship between patron and client, the principle of individual patronage between free proprietors—or rather, perhaps, the application of such a principle, the principle of the *Mund-borh* in short, to a free proprietary—appears then to have been unknown to the early Germans, and the Roman nature of the tie is clearly attested by the words occurring in a Formulary of Marculf, in which a "Servus ecclesiæ," or church-vassal, is supposed to confer freedom upon his own "servus," evidently by Roman law—"*Mundeborden* vero, vel defensionem, ubicunque infra potestatem sancti (episcopi vel abbatis) eligere voluerit, licentiam habeat eligendi, et nulli hæredum et prohæredum meorum reddat *libertinitatis obsequium.*"*

* *Leg. Lang. Rothaire*, 225-6. (*Canc.*) *Form. Marc.* 103 (*Lind.*) Compare also 88 and 96, in which the *Mund-borh* is connected with the *civis Romanus*. As long as there was no settled property, and the birthright of the Freeman consisted in his right to an unsettled allotment, it is evident that the support of the Libertus must have fallen upon the Community, and his manumission must have been a public act. Hence the rarity of the class amongst the Germans in the age of Tacitus, except where a king had monopolized the rights of the Community, when he would naturally support his power by the creation of a class personally devoted to his individual interests, and called into existence by the royal instead of the common will. Losses in war were probably the usual causes of a large enfranchisement; as when the Lombards "ut bellatorum possent ampliare numerum, plures a se servili jugo ereptos, ad libertatis statum perducunt." (*Paul. Diac. de Gest.*, l. 1, 13, quoted in *Ang. Sax.*, vol. 1, p. 219.) Private manumission could only have arisen out of settled property, and the principle—carried

The application of the Roman principle, recognizing the *Mund-borh* as a tie connecting one free proprietor with another, gradually placed the whole free population, either directly or indirectly, in dependance on the king. The tie was originally of a voluntary nature, when the *Leud* "sought out" the king, and with his Hirdmen, or immediate family and followers, swore *trust* and fealty in the royal hand, a form which gradually acquired the title of *mos Francicum*—"veniens in palatium nostrum una cum arimannia sua in manu nostrâ trustem et fidelitatem nobis visus est conjurasse"—being placed in return "in the royal Trust," and ranking as an *Antrustion* on a footing with the official *Graphio*.* France may be said to have been divided at an early period into *Allodial* and *Fiscal*, every Allod in the former being originally in the *Mund-borh*, or under the protection of the *Leud* or hereditary proprietor, whilst the whole of the Fiscal property was under the immediate protection of the king, and an offence committed upon the person of any one enjoying the privileges of the *Trust* was compounded for at three times the amount of a similar offence perpetrated upon the person or property of a *Leud*.† When, therefore, the Leud with his Hirdmen had sworn fealty "more Francico," in the hand or Mund of the king, he was at once enrolled amongst the royal Antrustions, or *Fidcles*, and entitled to all the privileges of the Trust; and if his Benefice, or terminable grant of Fiscal land, was subsequently converted into *hereditas*, or allod, these privileges, or *royalties*, as they were sometimes called in a later age, were centred permanently in the person of himself and his heirs male,

into Iceland (*Vide Gragas*, sec. 6, tit. 43)—that "he who gives freedom must also give the means of living," transferred the rights as well as the duties of the Community to the lord. The inability of the Libertus and his son to acquire hereditary right was gradually transferred to the *Roturier*, and "omnes qui non sunt ex homine militari *ex parte patris et avi* jure carent beneficiali" became the principle of imperial feudalism (*Lib. de Ben.* sec. 4).

* *Lex. Sal.*, tit. 43-4. *Form. Marc.*, l. 1, 18 (*Canc.*) *Trust*, like the Anglo-Saxon *socn*—its equivalent in many respects—may be said to have meant both the protection sought and granted, and the district over which it extended. *V. Ducange* (*Heinschel*) *in voc. Trustis.*

† *Lex. Sal.* tit. 43. *Recap.* 30, 31.

to whom he transmitted an inheritance of "Salic land," which stood out from amongst the fiefs of the Feudal era as *Franc-alleu-noble.* With the gradual development of the royal authority the tie of the *Mund-borh* became obligatory, and the Leud was bound "to seek a lord," and place himself under the protection of the king or of a seigneur, his land being thenceforward included within the limits of the royal or baronial *Trust;* but it was still the property of the Leud, free from seignorial obligations, though the tenure was not "gentle," and was known as *Franc-alleu-roturier.**

The various phases of society preceding the complete establishment of the Feudal system in England, France,

* Villam quam antea *ad fisco suo* adspexerat . . . cum omni integritate . . . *absque ullius introitu judicum* de quaslibet causas freda exigendum . . . *jure proprietatis possidere* . . . et ipse et *posteritas ejus* eam teneant et possideant et cui voluerint ad possidendam relinquant." *Form. Marc.*, l. 1, 17 (*Canc.*) Marculf wrote about the year 640. The above is an extract from a Formulary for converting a Benefice of fiscal land into Allod, evidently *Franc-alleu-noble*, all the "regalities" previously exercised by the Graphio, or royal deputy, being made over to the Antrustion or his deputy. "Salica terra" has been variously explained, but it seems to have been simply "crown-land," the old *Folk-land* or public property granted out, as opposed to the Allod or private property allotted to individuals. *Selelandt*, the Gloss mentioned by *Lind.* for Salica terra, is apparently connected with the old Frank *selen*, Ang.-Sax. *syllan*, to give, *i. e.*, "granted land." The Allod, failing male heirs, passed at once to females, and, by will, daughters could share with sons, as is evident from a Formulary of Marculf. The Salic law attached originally only to *selelandt*, and the *salicæ terræ*, found in early grants and charters, were lands subject to this law—lands which would have passed to the *heir male*, even if all the rest of the property had been willed away to heiresses. *Lex. Sal.*, tit. 62. *Form. Marc.*, l. 2, 12 (*Canc.*) As late as the Revolution of 1789 there were three tenures in France, *Franc-Alleu*, *à Fief*, and *à Cens;* though their peculiarities had for centuries attached to the land, like manorial rights in England, not to the proprietor. As early as the date of Domesday there were holders of "terræ Villanorum" who were very far from being Villeins. *Franc-Alleu* was divided into *noble*—privileged and passing to the male heir, and representing the royal grant of Salica terra to the Antrustion; and *roturier*, unprivileged and divisible by the old allodial custom of equal partition. The proprietor by the latter tenure was "within the justice" (in sectâ curiæ) of the Seigneur within the limits of whose barony his property was placed —within whose *Trust* or *Socn* he was— but in all other respects the property was free from private obligations, owing "ni devoirs ni droits Seigneurieux;" and it represented the earlier Allod, the private property of the Leud, brought into *Trust* when that tie had become obligatory.

and Germany, may be arranged, in a general way, under the heads of *Allodial* and *Intermediate*. The earliest and purest form of the allodial system was usually represented by a community of untaxed proprietors retaining a portion of public land to supply the necessary exigencies of the state; whilst in its later form the king had replaced the community, reserving the public property, now known as fiscal or crown land, for the exclusive support of his Gasinds, or immediate personal followers. Irrespective of the original allotment, more or less shifting in its character, and hardly belonging to a settled state of society, two tenures only are traceable during the earliest portion of this period, the *pure* Allod, or inalienable freehold belonging to the Allodial freeman, and the official tenure of the Graphio, or deputy exercising authority over taxed and fiscal land; though a third was very soon added, the Benefice, or terminable grant, bestowed upon the royal soldiery, originally after the completion of their service in the royal Hird. In the second, or Intermediate period, the community had been entirely converted into a kingdom, the representatives of the earlier freeholders existing as a taxpaying, and gradually sinking into a *roturier* class agricultural rather than military, the bulk of the soldiery being now supplied by the beneficed followers of the king. The prevalence of the *impure* Allod may be described as the characteristic of this period; either *noble*, held by the Gasind contrary to all earlier precedent as a hereditary grant from the king, who, with his Antrustions, had by this time acquired the full and entire rights of the earlier community; or *roturier*, representing the old freehold deprived of "Allodial right" and taxed. Another feature of the same period may be described as "the royal conquest," not necessarily the result of an actual appeal to arms, the district thus absorbed, or annexed, being no longer allotted out amongst a new Allodial proprietary, but retained in the crown and administered by royal officials, the original proprietary remaining on a subordinate footing and taxed, but often retaining certain privileges as the price of submission. The comparative absence

of a nobility whose place was often supplied by a numerous *roturier* proprietary, was often, though by no means invariably, the result of a conquest of this description, of which Friesland and the Tyrol may be instanced as examples, whilst on our own side of the channel, Kent long presented similar features in her prevailing tenure of Gavelkind. At a later period the principle of *Emphyteusis* (a name first appearing in the Pandects of Justinian, and pointing to the eastern empire as its original source), and subsequently the royal charter, converted the Benefice into the Feud instead of the Allod—the terminable into the hereditary lease, instead of into the absolute grant of property—thus entailing upon the holder relief, aids, wardship, and other obligations distinguishing the Feud from the Allod; and with the substitution of the principle of a hereditary tenancy, inalienable from the holder and his heirs as long as they fulfilled their obligations, a principle familiar to the Roman long before it was acknowledged in the Frank or German Empire, the true Feudal system may be said to have commenced.*

* The best description of the Feud is contained, perhaps, in a charter of the date of 1216, quoted by Ducange *in voc.* "Usus et consuetudo Francie talis est, quod ex quo aliquis saisitus est de aliquo feudo per dominum feodi, dominus feodi non debet alium recipere in hominem de eodem feudo, quamdiu ille qui saisitus est de feudo velit, et paratus sit, jus facere in curiâ domini feodi et persequi." The Roman *Munifex*, according to Festus, was the holder of an office in the actual discharge of its duties, whilst the *Beneficiarius* was the *Munifex emeritus*, enjoying a Benefice or reward for having discharged them. So in early times the Gasind was an actual member of his lord's Hird, enjoying the *largæ epulæ* described by Tacitus, the *Læn* without which he could not marry being, in a settled state of society, the Benefice that rewarded his services, on receiving which he ceased probably to be in constant attendance in the Hird. It was the miles *emeritus* who was entitled to his Læn, according to Beda's letter to Archbishop Egbert. There was one stage of society in which the whole nobility, and another in which the majority of the same class, resembled the clergy in being "beneficed," or "holders of livings," not hereditary proprietors of any particular spot of land; a system which must have presented many similar features to the Gaelic "Law of Tanistry," which is described further on. The use of the word *Emphyteusis* first occurs in the Frank laws in *Cap. Lang. ad an.* 819 (*Pertz. Leg.*, vol. 1, p. 228), "et defendantur res ecclesiasticas ut emphyteusis, unde damnum ecclesiæ patiuntur, non observetur, sed secundum Legem Romanam destruatur." The feudal system is often charged with sins of which it was scarcely guilty, for most of its burdens were in existence long

Two characters stand out in early prominence amongst the Anglo-Saxons, the hereditary *Cyning* in place of the *Ealdorman* of the continental Saxons, and the hereditary *Gesith* or *Gesithcundman*, in place of the *Adaling*. The condition of the Gesith—or Gasind—in the days of Tacitus, was simply that of a military follower, and as every free member of the community was entitled to his allotment in right of his birth, so every Gesith, in return for resigning his birthright, was entitled to the support of the lord to whom he dedicated his service. The permanence of the tie which bound the Gesith to his royal master, in later times, is unquestionable, and the operation of the law of "three descents" must have eventually rendered hereditary both the lord's right to the Gesith's service and the latter's claim upon his lord's support, thus originating a class essentially Germanic—for it is not to be found amongst the early Northmen—which was known amongst the Anglo-Saxons under the name of Gesithcundmen. In Wessex, by the close of the seventh century the entire nobility appears to have been confined to this class alone, for there is not a trace of Allodial tenure to be found in the laws of Ini, the Ealdorman forfeiting his *shire* and the Gesithcundman his land at the royal pleasure if either failed in his respective duties. In Kent, at the opening of the same century, the freemen were still divided into Eorlcund and Ceorlcund, but before its close, in the laws promulgated by Wihtred, the contemporary of Ini, *Gesithcund* is opposed to Ceorlcund, and the King's Thegn has replaced the Eorl, sure and unmistakeable signs of the gradual progress of the royal authority. Elsewhere the Intermediate period had already superseded the Allodial at the very outset of Anglo-Saxon history, the beneficed Gesithcundman, the forerunner of the hereditary King's Thegn holding *Bocland*, standing in the place of the Allodial Eorlcundman.*

before its rise, and without depicting the actual system in colours any brighter than usual, I must be permitted to doubt the pre-existence of a halcyon state of liberty and independence.

* *Ini*, 36, 51. *Leg. Wiht.*, 5, 20, 21. The penalty for "fighting" is divided in the laws of Ini into the *Wite*, and the *Bot*, in every case except in that of the Church; and as the *Wite*

The original King's Thegn was a member of the royal Hird, who, upon the cessation of his actual service about the person of the king, received as a "miles emeritus" a grant of land—a Læn or Benefice—out of the Folk-land. He was the soldier, *thegn*, or military follower of the king, as the Gerefa was the royal official, and wherever Beda uses the expression "miles," it is invariably rendered in the Saxon version by "cyninges thegn," proving how completely the soldier or man-at-arms was connected with the king. When the Saxon Chronicle, however, in deploring the mortality amongst *the King's Thegns*, enumerates as some of the most eminent under that title *Bishops*, *Ealdormen*, and a *Wic-gerefa*, it can hardly be doubted that, at the period when the chronicler wrote—apparently towards the close of the tenth century—the name of *King's Thegn* was applied to all who would have been known in the feudal era as "tenants *in capite*:" and as in the tenth century it was penal to give *Socn* to a King's Thegn, who, in other words, could not "change his lord" or withdraw his fealty from the king, whilst the *Wite*, one of the Overlord's prerogatives, was due to the king alone from all who held a *Boc*, it may be safely assumed that all the leading proprietary held at this time by the tenure of the hereditary King's Thegn.* This change was originally

always belonged to the *Overlord*, it is evident that, at this period, church lands alone were Allodial, or held absolutely without dependance on an Overlord. The Gesithcundman might be "driven from his land" or leave it voluntarily, in which case he might take with him his Reeve, Smith, and child's *fosterer*, all the rest of the tenantry belonging evidently to the Benefice not to its holder, who was simply "a Middleman" (*Ini*, 6, 63, 68). The only traces of Allodial tenure in Wessex at the time of the Conquest occur in Hampshire and Berkshire—in *old* Wessex, which may have been partitioned allodially (*Ellis' Introd.*, vol. 1, p. 54). The western portion of the kingdom, which was acquired subsequently, is marked by the *Sætta* —Wilt-*sættas*, Dorn-*sættas*, Sumer-*sættas*—and wherever the *Sætta* is found, the old mark has been crossed or encroached upon. It is very doubtful if Allodial tenure ever existed in this part of Wessex, which was probably incorporated by "a royal conquest." The earliest allusion to "individual *patronage*" occurs in the laws of the Kentish Wihtred (8), which confirm the right of "the giver of freedom at the altar," *i. e.*, by church or Roman law, to the inheritance, the *Wergild*, and the *mund*, or patronage of the Libertus, as on the Continent.

* *Chron. Sax.* 897. *Leg. Eth. I.* 1, *III.* 11. The oldest MS. of the Chronicle containing the passage in ques-

brought about by the *Boc*, the *libellus* or charter converting the Benefice into the impure Allod, which was unquestionably of Roman origin; and as its first appearance in England is connected with the church, its introduction was probably owing to the foreign clergy, to whom, of course, it was familiar. Its use, indeed, seems to have been confined at first, as amongst the Franks, to the church; which may have given rise to the abuse of which Beda complains in his letter to the Archbishop of York. It had become a regular practice, according to the venerable historian, to purchase lands from the king, and, by a liberal distribution of money amongst the leading clergy and nobles, obtain "letters of privilege," rendering them hereditary, on the nominal condition of founding and endowing a monastery. Here, however, the purchaser constituted himself abbot, living with his wife, his family, and his retainers, the latter assuming the character of monks; so that there was scarcely a Gerefa, Thegn, or member of the royal household, who was not also an Abbot.* It is difficult to conceive a reason for a course so universally pursued, unless on the supposition that *lay* grants of Bocland in perpetuity were as yet unknown, and that in order to favour the wishes of their followers for hereditary grants of land the kings connived at an abuse from which they must have profited largely. Its suppression may have been accelerated by the introduction of the "impure Allod," or royal grant of Bocland, equivalent to the *Franc-alleu-noble*, by which the leading Gesithcundmen were converted from *Beneficiarii* into proprietors, transmitting their lands and privileges to their descendants as *Gesith-socns*.† As the early absorption of the nobility amongst

tion ends at the close of the tenth century.

* *Bed. Epist. ad Ecgb.*, sec. 11-13. From his expressions "hoc insuper in jus sibi hereditarium edictis regalibus faciunt ascribi, ipsas quoque literas privelegiorum suorum, *quasi veraciter Deo dignas*, Pontificum, Abbatum et potestatum seculi obtinent subscriptione confirmari," it would appear as if he thought the "letters of privilege" belonged only to things ecclesiastical.

† It may be gathered from *Leg. Hen. I.* vi. 1, that the Shire was divided into Hundreds and *Gesith-socns*, or baronies, and subdivided into Tythings or *Frith-borhs* composed of *king's men* answerable to the Hundred-court, and "plegios Dominorum," *baron's men*, answerable to their lord's court. *Boc-*

the Gesithcund class must have changed their Allodial condition—wherever it existed—into immediate dependance upon the crown, so the universal enforcement of "Hlaford-socn," commendation, or the necessity of "seeking a lord," must have placed the whole kingdom, either directly or indirectly, in the same condition. The nature of *socn* in its pure and original form may be gathered from the *soc* in Lincolnshire, "quod nihil reddebat, sed adjuvebat in exercitu regis in terra et in mari," and from the condition of the Socmen of Stamford at the date of Domesday, who were free "to seek a lord" at pleasure, and were only liable to the king for *forisfactura—wite*, or legal penalties —heriot and toll.* The heriot in the case of these Socmen was probably the result of the conquest of Canute, and toll attached to them as inhabitants of a burgh, so that originally they would have been only liable for the legal penalties they might incur, on which the king, or Overlord—the giver of *socn*—would have had the usual

land was not necessarily *Franc-alleu-noble*, being simply land held by charter; but if a King's Thegn held a grant of bocland only liable to the *trinoda necessitas* with his "*sac* and *soc*," he must have been on a very similar footing with the Frank Antrustion holding in Franc-alleu-noble with "la haute justice." The district over which he exercised his privileges was his *socn*, and within its limits no Gerefa but his own had jurisdiction, except in the shires where the earl would claim his "tertius denarius."

* *Ellis' Introd.*, vol. I, pp. 68-72, 274. Compare *Chron. Sax.* 918, 921-22. *Leg. Ath. I.* 2, *III.* 5. The nearest approach to the nature of this tie, in comparatively modern times, will be found perhaps in the mutual bonds of *Manred* and *Maintenance*—protection in return for allegiance—so often drawn up between the greater and lesser notabilities in the Highlands of Scotland two or three centuries ago. The following bond, of the date of 1601, is an example:—The Earl of Argyle "acceptis the saide Lachlane (M'Kinnon) as his Lordshipis native and kyndlie freind, servand, and defendar, promesing . . . to protect the saide Lachlane, his men, tenantis, and servandis . . . as his Lordship sall do to ony of his awin surname, or to ony uther his native kyndlie freind and defendar . . . the same Lachlane sall await and depend upone the said noble Lord, and serve him be sea and land as his native and kyndlie maister, protectour, and defendar," etc., etc., both parties binding themselves to fulfil the contract "contraire all that liff or die, oure Soverane Lord and his authoritie allernerlie exceptit." *Col. de Reb. Alb.*, p. 201, No. xvi. This is simply a state of *clientage*. The word is sometimes written Man*rent*, but erroneously, as the tie was not in any way connected with *rent*. The *red* in Man*red* is a termination, as in Gemein*red*, Gossip*red*, now contracted into *ry*, as in yeoman*ry*, caval*ry*, infant*ry*.

claim. Many of the Socmen, as well as those of Stamford, might "go with their land where they chose," or change their lord at pleasure, so that the tie was not originally permanent, the land-owner being only bound to "seek" some lord or "commend himself," and it may be regarded as the legal enforcement of a voluntary tie by which the whole free population was brought into the *socn*, either directly or indirectly, of the king. The original Socman was in many respects the type of the holder in *Franc-alleuroturier*, the *Land-agende* Odal-Bonder, or Allodial proprietor, brought into the *socn* of the king or of a King's Thegn, but retaining his land and privileges as before; the exclusive limitation of this class to Danelage, at the date of Domesday, confirming the utter absence of Allodial tenure except in Kent—and with a few rare exceptions elsewhere—throughout the whole of Saxon England when it was first united under one sceptre by the descendants of Alfred.*

* The *Heriot* first appears in the laws of Canute (S. 72). As the *Relief*—from *relever* to "take up" the Benefice which had fallen in on the death of the possessor—attached to the Feud, so the Heriot was, strictly speaking, the return of the *Here-geat*, or loan of arms, and marked in noble tenure the Benefice or military Læn, though the words are often used indiscriminately. The Heriot must have been well known amongst the Anglo-Saxons, but as Relief did not attach to *pure Socage*, I think it may be inferred that originally the Heriot belonged to the *Læn*, but not to *Bocland* only liable to the *trinoda necessitas*, any more than to *Franc-alleu*. The general enforcement of the Heriot, and the retention by the sovereign of certain prerogatives "unless he will more amply honour any one and concede to him this worship" (*C. S.*, 12, 14, 15), seem to establish the fact that Canute placed England in some respects on a similar footing with Denmark, no "franchises" passing by hereditary right. Another point in which England was assimilated to Denmark was the *Land-tax*, levied annually, and known as *Heregeld* or *Danegeld*. Tribute was first paid to the Northmen in the year in which Ipswich was harried and Ealdorman Brithnoth slain, events generally placed in 993, or eighteen years after the death of Edgar. It was paid to the Norwegian Olaf Tryggveson, Ethelred, through the intervention of Archbishop Sigric, purchasing "the Frith," or peace, at the price of 22,000 pounds of gold and silver; and a regular convention was entered into between the kings, like the agreement between Alfred and Guthrum, in which their people seem to have figured respectively as "the landsmen" and "the shipmen." So strong was the recollection of this acknowledgment of "tribute" that in the *Leg. Ed. Conf.* it is asserted that Edgar's laws ceased to be in force from eighteen years after his death until the accession of the Confessor—a statement which, though not substantially correct, can only refer to this acknowledgment of tribute to the

Very different features were exhibited in Scandinavia, where a Gesithcund class was originally unknown, and where the "impure Allod," in the form of *Franc-alleu-noble*, or of *Bocland*, and indeed the very principle of *Hlaford-socn*, seem never to have been acknowledged, whilst the feud or hereditary benefice was still unknown in the fifteenth and sixteenth centuries. The unity of the royal power in the north was brought about, not so much by amalgamation as by actual, but internal, conquest—entailing upon all who submitted the badge of conquest, taxation, and the loss of Odal right; and peopling Iceland and the British Isles with all who, clinging to their ancient liberties and privileges, preserved them at the price of voluntary exile. The Bonders, after various struggles, remained as a taxed proprietary class, the *Holdr*, or old *Eorlcundman* of six pure descents, still ranking as an *Odalsmand* and on a footing with the lesser royal nobility, but beneath the *Lenderman*, the *Stallr*, and the *Jarl*—the royal officials—the whole noble class remaining for centuries on the footing of the Gesithcundman of Wessex in the days of Ini, holding benefices conferred for life. The royal property remained inalienably in the crown, and was administered by Jarls, Lendermen, and other officials, the rents, dues, fines, and other royal prero-

Norsemen, which implied the collection of a tax previously unknown. About twenty years later, in 1012, Ethelred, after "buying the Frith" as usual of "the Here," subsidized forty-five of their ships as a defensive navy; and as in 1052 the *Chron. Sax.* represents the Confessor as discharging "the Litsmen," and repealing the Danegeld, which had then lasted thirty-nine years, the regular Danegeld for subsidizing "the shipmen" evidently dated from 1012. The Danish kings kept up the impost as a regular land-tax, levied for the purpose of paying "the army of occupation," or rather the navy, which secured their power over England. The recipients of the pay appear in the Chronicle, first as the *Here*, and, after it became a settled impost, as the *Litsmen*, shipmen or sailors, the *Thingmen* of the *Leg. Hen. I.* xv. (*Laws of Eth. II. Leg. Ed. Conf.* xxxiv. *Chron. Sax.* 993, 1012, 1052.) The Northmen always appear to have levied a regular fine wherever they went, for in France, when the Danegeld was levied in 877, every bishop, abbot, count, and royal vassal, paid 12 pence for every *mansus in demesne;* every free *mansuarius* paid 8 pence for his *mansus*, half de censu dominicali, half de facultate mansuarii; and every servile holder of a *mansus* paid 4 pence, 2 from his rent, 2 from his own property. *Capit. Carl. II. ad an.* 877. (*Pertz. Leg.*, vol. 1, p. 536.)

gatives being collected in their respective districts under the superintendence of the Jarls, who retained a third as their own prerogative, representing very frequently in early times the original proprietors of the Jarldoms, exercising as royal deputies an authority which was once their own.*

The tenure of the Scandinavian Jarl was very far from being a peculiarity originating in, or confined to, the north. A third was the recognized share of the Graphio in the olden time amongst the Franks, long continuing to be claimed under the title of the *tertius denarius* and the *tertia pars bannorum;* whilst in Hungary, once divided into upwards of seventy "comitatus," each Count claimed a third of the royal revenue as his own prerogative. The custom once prevailed throughout Saxon England, and is traceable in many parts of the Domesday survey, especially in the northern and central portions of Danelage. It was as old as the first settlement of the Germanic tribes within the Imperial frontier, when the *Roman* was confined to his *third*—the *tertia Romanorum* of the Burgundian and Visigothic codes—and may be traced probably in the intended policy of Ariovistus, when he mulcted the Sequani of *a second third* of their territory, thus confining them to the portion of the dependant; for a third appears in the olden time to have been the portion allotted to the dependant, whether *wife*, *reeve*, or *tenant*, and when Odoacer and Theodoric were contented to exercise their authority in the name of the Emperor without

* *Heimsk. Har. Harf. Saga*, c. 6. In *Ducange* (*Heinschel*), under *Feudum*, is the following passage, of the date 1420:—"Si Dania vel jure vel consuetudine uteretur Romanorum . . . . filii surrogarentur. Sed quemadmodum *jus aut consuetudinem Romani Feudi Dania non agnoscit*, ideo concessio . . *non est realis sed personalis.* In Sicily under the Normans the *Feudum Romanum* was equally ignored. Titles of nobility were first made hereditary in Sweden by Eric XIV., son of Gustavus Vasa, about 1560, and in Denmark about forty years earlier, by Frederic. With the word *Sokn* the Northmen were perfectly familiar, but not in the peculiar Anglo-Saxon acceptation of *Hlaford-socn*, or Commendation. *Compare Halderson and Ihre, in voc.* A passage in a charter of Frederic II. to Ratisbon, dated in 1230, "Quicunque residens in civitate impetitus fuerit quod sit *Vogtman* alicujus," points to the necessity of *Hlaford-socn*, under a different name, in Germany (*Ducange in voc. Vogtman*).

assuming "autocracy," they were both contented with the portion of the *deputy*, and only claimed *a third* of the Roman lands.* It was simply the old official tenure with which the northern people had probably been familiar from time immemorial, whilst the King's Thegn holding *Bocland*, the proprietor in *Frank-alleu-noble*, and the feudal baron, were characters totally unknown; their equivalent in many respects, the *Herser*, or military tenant, holding apparently in early times by *Veitzla*—*victualling*, *feorm*, or *coigny*—by quartering the king during his winter progresses—a species of tenure which seems traceable in the early Merovingian era, and which, as royalty ceased to be migratory, appears to have been commuted for a fixed and stated rent, answering, when hereditary, to the feudal tenure of *fee-farm*.†

* *Ducange in voc. Tertius Denarius. Procop. de B. G.*, l. 1, c. 1. Though traceable in many parts of England, the custom is most observable in Danelage, the following form continually occurring in Domesday:—"Pax Regis emendatur per xviii. hundrez. Unumquodque Hund: solvit viii. libras. Duodecim Hund: emendunt regi et vi. comiti." This exactly tallies with the Laws of the Conqueror, which declare the fine for a breach of the king's peace in Danelage to have been 144 lb. The "consuetudines Regis et Comitis" are also frequently met with. In the united shires of Nottingham and Derby, the "Consuetudines Regis ii. denariorum" are mentioned, the "tertius denarius" evidently belonging to the Earl (*Domesday*, vol. 1, pp. 280, 280 B, 298 B, 336 B). The mulct of a third was a custom not confined to the people of the north. An unsuccessful war with the Arcadians cost Elis *four* out of twelve *tribes* (*Paus.*, l. 5, c. 9, sec. 6), and Porsenna's conquest mulcted Rome of *ten* out of *thirty*.

† *Har. Harf. Saga*, c. 6. Each *Hersir*, according to Snorro, received "20 marks *veitzlo*," and was bound to furnish 20 *Hermanna* or soldiers. The "20 marks veitzlo" bears a close re-resemblance to the 20 lbs. "knight's fee" in England *Veitzla* and *Coigny* do not appear to have been, strictly speaking, identical. *Coigny* answered to quartering the lord's retainers; *Livery* seems to have applied to animals; and both properly belonged to ignoble or villein tenure. Amongst the Cymri the free *Maenol* was not liable either to *Cylch* or *Dowraeth*—to *Cuairt* or *Coigny*, Visitation or Refection—but only to the payment of a fixed rent, the *fee-farm* tenure of the later Scottish thanage, and to the *Cylch mawr yr Teulu*, or the great progress of the royal household in winter (*Code of Gwynnedd*, bk. 2, c. 19, sec. 16). This seems to answer exactly to Veitzla, and resembles the "yerely *Cosherie*" due to the Archbishop of Armagh in his Visitation (*Colton's Visitation, passim*); *Cosherie* was probably connected with *Cios*, and was only due to the lord and his retainers on a *cuairt* or progress. The word in Scotland seems to have been *Cuid-oidche*, the Anglo-Irish *Cuddie*, "a night's

Such were some of the results of internal conquest amongst a northern people uninfluenced by the intermixture of a Roman element, or the growth of Roman principles, and Scotland before the introduction of the feudal system appears to have presented many very similar features. The Scottish kingdom was founded unquestionably, in the first instance, by internal conquest, and subsequently enlarged by similar means, such conquest being attended, as in the north, by the loss of the original *duchas*, or *odal* right, and the imposition of taxation. The *Ceau-cinneth—Pencenydl* or *Adaling*—who submitted to the royal authority, as there was no intermediate state of *socn*, must, like the Norwegian Jarl, have held the lands which were once his own by the tenure of the Maor or Thane, as a royal official or deputy answerable for the rents and other royal prerogatives in the district committed to his charge; a tenure which grew in feudal times into that of fee-farm. It is in the Highlands that the older tenures would naturally be longest traceable, and it will be found, accordingly, that as late as the sixteenth and seventeenth centuries all the leading proprietors in the Highlands who did not hold as barons or *lairds*—as freeholders by knight-service—held as royal *baillies* and in fee-farm; for in the "Roll of the names of the Landislordis and *Baillies* of Landis in the Hielandis and Iles," appended to "the General Band," all who are not entered as *lairds*—lesser barons—or under some higher title, must necessarily have come under the denomination, not of *Landislordis*, but of *Baillies of Landis*, or, as they would have been called some centuries earlier, Maors or Thanes.* The district over which the Scottish

feorm." *Coneveth* sounds as if it were allied to *coigny—convictus*.

* *Col. de Reb. Alb.*, p. 35, No. viii. In the next page occurs "The Roll of the Clannis that has Capitanis, Chieffis, and Chiftanis, quhome on they depend, oft times *aganis the willis of thair Landis lordis*;" in other words, the *Capitane* or *Chiftane* was often not the freeholder of his land, but the *maor* or baillie, holding in fee-farm. At p. 161, No. x, is a grant in hereditary fee-farm from James VI. to Hector MacLean of Dowart, of the lands which he and his ancestors had held of the Abbots of Iona (evidently as a renewable *tack* or benefice); in other words, the old *Abthanage* was confirmed as a hereditary *thanage*. As the grant was not held by knight-ser-

Maor exercised authority was not his own property any more than the Læn of the Norwegian official; the freehold was in the crown, and, after the introduction of the feudal system, might be transferred to another holder, as in the case of the thanages held by Sir Walter Lesly upon the freehold of the Earl of Sutherland. It would appear, however, that a certain portion of land was attached to the office, both from the parallel case of the *Herenach* amongst the Irish Gael, whose relations towards the *Cowarb* much resembled those of the maor to the king; and from the charter of Robert Bruce confirming the thanage of Cawdor to the hereditary "Thane of that ilk," in which it will be found that the thanage included the "terra Fergus judicis;" both Thane and Deempster—Maor and Brehon—evidently possessing land in right of their office (equivalent to the *macnols* of the Cymric Maer and Cynghellwr in the *Cynmud*) as well as their share in the royal prerogatives answering to the "tertius denarius et tertia pars bannorum."* Both land and rights were attached to the respective offices, and at the first extension of the royal authority over a conquered district, when all *duchas*-right was centred in the king, who assumed the prerogatives of the earlier *Ceau-cinneth*, *Cyning*, or head of the *Kin*, both Maor and Brehon were simply royal officials, as removable from their districts as the Anglo-Saxon Gerefa or the Norwegian Lenderman; but wherever the offices were continued in the same family, by the action of the "Law of three descents" *duchas*-right must have been acquired, and at the era of the introduction of the feudal system throughout settled *Scotia*, the majority of the officials were probably hereditary.

vice, the usual relief of "socage tenure" attached to it, a year's rent—"duplicando census primo anno introitus."

* For the lands and prerogatives of the Herenach, which were subsequently made over to the bishop, *vide Colton's Visitation*, *passim;* for the Cawdor charter, *Reg. Morav. Cart. Orig.* 20, or "Thanes of Cawdor." As the Latin *advocatus* has passed into the languages of Germany and the north under the corrupted forms of *Vogt* and *Fogde*—royal officials much resembling the "captains" of the royal castles in Scotland—it seems allowable to conjecture that the *lay* tenure was subsequent to, and founded upon, the ecclesiastical, both being derived from a Roman source.

There was a custom remaining in full force in many parts of Ireland at the close of the seventeenth century, and then said to have been current amongst the Irish Gael "from time out of mind," which throws considerable light upon the state of society which prevailed, in all probability, amongst the kindred Gael of Scotland at this period. It was usually known amongst the Anglo-Irish as "the Law of Tanistry," and in the Inquisition taken at Mallow, in 1594, it was thus described. "The O'Callaghan is seized of several large territories . . . . as lord and chief of *Poble* O'Callaghan (*i.e., people, Leod* not *land*) by the Irish custom time out of mind used . . . . there is a Tanist . . . . seized as such by the said custom of several plough-lands . . . . the custom is, further, that every kinsman of the O'Callaghan had a parcel of land to live upon, and yet *no estate passed thereby*, but that the lord and O'Callaghan for the time being *may remove the said kinsmen to other lands;* and that (seven of the name) were seized of several plough-lands according to the said custom, subject nevertheless to certain seigniories and duties payable to the O'Callaghan, and removable by him to other lands at his pleasure."* Such was one of the leading features of the law of Tanistry where the lord of the district was also chief of the kin. When a territory of this description was simply rendered tributary, the rights of the chief to allot the land amongst his kinsmen would not be interfered with as long as he paid his stated tribute; but when it was conquered, or reduced to absolute submission, it is evident that, as all the rights of the head of the lineage

* *Ware* (*Harris*), vol. 2, c. 11, p. 72. The elective theory was still in force, and the chief and Tanist were nominally chosen by the kindred. The state of society in Sweden during the thirteenth century presented many similar features. *Tiunda*-land, *Attunda*-land, and *Fiadhrunda*-land, the three divisions of the *Upland* kingdom, first chose the king; the Upland *Laghmadr* first proclaimed him, the *Laghmadrs* of the other kingdoms following in stated order. A royal progress, *cuairt* or circuit, through the provinces followed, with "*grith* and *gislas*," oaths of allegiance and hostages; and after the conclusion of these forms the king might take the Upsal *odha*, *Dulgha drap*, *Dana arf*—various royal prerogatives—and give *læns* to his *Tianistermanna* or Thegns (*Leg. Upl.*, c. 1, 2, 3). In certain points the Swedish king resembled the Celtic *Ardrigh* fully as much as the *Romano-feudal* sovereign.

passed to the conqueror—the king—*no estate passed at all*, and the whole district would be administered by officials whose office and prerogatives would alone become hereditary.*

The laws of the Cymri disclose institutions similar at once and different, not a little resembling the state of society amongst the Lombards when the *Primus* and the *Gasindius maximus*—the head of the lineage and the official noble of the highest class—stood side by side, a state of society which may have existed at some earlier period amongst the Scottish Gael. Half the *Cymmud* seems to have been allodial, held by *Breyrs*, the repeated divisions and subdivisions of property disclosing the principle of joint-occupancy between the *Breyr* and his *Aelodeu*, or kinsmen within the fourth degree, rather than the fixed and absolute property of each individual in any one spot of land. The remaining half was fiscal, held by the royal officials and *Alltudion*, the latter only acquiring by descent a right to remain in their respective cottages, and cultivate in common the district to which they were attached, whilst there is no direct evidence that the offices of Maer and

* The intermediate or tributary state is exemplified in the case of "the O'Driscoll." According to the old custom the eldest of the race succeeded to the property, MacCarthy More giving him on the occasion of his succession a rod in token of seizin, after which he was obeyed as lord of the country of Collimore, paying a certain rent and service to the MacCarthy. The O'Driscolls had originally been independent of the MacCarthies. This state of affairs was ended by Sir Finan O'Driscoll "taking his lands by letters patent from Queen Elizabeth;" and in a similar manner the charter had superseded the earlier form of tenure in many another locality besides Ireland. In the older state of society, the law of "might makes right," by which the MacCarthy had originally reduced O'Driscoll to this dependance, would have probably enabled him, as his race increased in numbers and power, to make over "the country of Collimore" to one of his own kinsmen; in which case the representative of the old line of kings of the alien race of "Clan Dhairfine" would have been reduced to the condition of a Biatagh, or tenant-farmer on his own property. Such changes must have not been unfrequent, and an attempt of this description appears to have been made by a junior branch of the O'Dubdha, which, after first excluding the elder line of O'Caemhan from the chieftainship of Hy Fiachrach, next tried to deprive them of their lands, or rather of their *duchas* right, and thus reduce them to the condition of tributary *Daer*-clans. (*Miscell. Celt. Soc.*, Ap. D, note. *Hy Fiachrach*, pp. 109, 253.)

Cynghellwr were ever permitted to become hereditary. Where the nobility was Allodial, office was seldom hereditary.* Nor is this state of society to be regarded as a peculiarity confined to the Celtic people, for its germs are traceable in the description left by Cæsar of the Germans of his age, possessing no fixed property beyond the allotment annually portioned out by the "magistratus ac principes" amongst the various *cyns* and *mægs*—"gentibus cognationibusque."† It was the introduction of the Roman charter and of Roman principles that gradually changed the state of society amongst the German people, no "estate passing" apparently amongst the earlier Leudes until the rise of the fixed Allod, nor until long afterwards amongst the Gesithcund class, members theoretically of the sovereign's family, who could have acquired no fixed property before the introduction of the impure Allod; and Wessex under Ini must have presented many similar features to those which might have been traced in Ireland as late as the seventeenth century, though on a smaller scale, under the name of Tanistry.‡

The Mormaor, or old Scottish equivalent of the Earl, was, as the name declares, no other than a greater Thane, a High-Steward or *Heah-gerefa*, bearing the same relation to the Maor that the King's-Ealdorman, Earl, or Jarl, did to the king's Gerefa, or the ordinary royal Stallr or Len-

* *Code of Gwynnedd*, bk. 2, c. 18, sec. 14, 15.

† *Cæs. de B. G.*, l. 4, c. 1; l. 6, c. 22.

‡ In the case of the land "booked by king Eadred to Ælfstan as an inheritance for ever," on the death of Ælfstan, the "landes and æhta" of his son Ælfric reverted to Ælfeah the heir, who granted a *læn* of certain lands to his brother. On the death of Ælfric the lands, again falling in, were regranted to his son Eadric; on whose death the *morgengife* of his widow was confirmed by the still surviving uncle. (*Cod. Dip. Sax.*, vol. 6, No. 1288, quoted in *Ang. Sax.*, vol. 1, Ap. E, *Lænland.*) Evidently "no estate passed" to the junior members, who seem to have had a claim upon their *Senior*, much as in the Irish Tanistry. The principle was much the same as that of the kingdom, which the king possessed, subject to supporting his Gesiths. So the "booked land" belonged to the Senior, who provided for his kindred. In the same Appendix is an account of the manner in which church lands were leased in the diocese of Worcester, strictly in accordance with the principle laid down in the *Lib. de Ben.* 3, "In *tertium* descenderunt clypeum laicales principes cum episcoporum fiebant homines."

derman. In the time of Alexander II. the majority of the Earls evidently held as feudal barons, without any claim to their ancient prerogatives over the tenants *in capite*, whose *forisfactura, wite*, or penalty for absence from the muster at Inverness, belonged to the king alone. The sole exception to the rule was the Earl of Fife, who was privileged to enter by his *Serjeants* upon the lands of all the freeholders in his earldom to "exact his rights" in the capacity of "King's Mair of the county of Fife."* A similar distinction is traceable in England at the era of the Norman conquest, a grant of "*sac and soc*" within the shires of Nottingham and Derby only conferring the "denarii Regis" upon the holder, the "tertius denarius comitis" being still demanded except in the case of three privileged persons, whose immunity, however, was only a grant for life; so that had there been an Earl of these counties, he would have been invested with privileges similar to those of the Earl of Fife.† There seems little doubt then that the Mormaor, like the Maor, was a royal

* *Stat. Alex. II.* c. 15. The *Mair* seems gradually to have assumed the character of the deputy of any official, generally, but not always, the acting personage, and occasionally a deputy's deputy. By an act of James I., passed in 1429, "a mair of fee," whether mair of the whole sheriffdom or of a portion —a Quarter or Ward—might appoint his own deputy. The "mair of fee" of a sheriffdom must have been at one time a sort of hereditary "sheriff-depute." The practice of appointing deputies appears at this time to have arrived at an extraordinary height, for in 1450 there were *three* "Mairs of the Quarter of Brechin," and in the case of a dispute about some lands, the king issued his writ to William Nudrie, "Mair of fee of our lands of Brechin;" the Sheriff, Alexander Ogilvy, to Thomas Murchison "Mair of the Quarter of Brechin;" and the Sheriff-depute, Walter Ogilvy, to David Balbirnie "Mair of the Quarter of Brechin." Nudrie was apparently the hereditary royal official, who was bound to look after the royal interests, and might appoint a deputy; Murchison stood in a similar relation to the Sheriff, and Balbirnie to the Sheriff-depute, the latter Mair being the acting official when the lands were perambulated, whilst Nudrie, a man of a certain standing, appeared amongst the *Probi homines* of the *Visnet.* (*Act. Parl. Scot.*, vol. 2, p. 17. *Reg. de Brech.*, Nos. 67, 74, 77.)

† *Domesday*, vol. 1, p. 280 B. There was a certain mulct of two shillings per hyde which Henry II. seems to have tried to convert into a permanent royal prerogative, and which appears to have been paid to the Sheriffs by the vassals of certain barons "quatenus tali servitio et beneficio eos a gravaminibus et calumniis hominorum suorum cohiberent." (*Robertson's Beckett*, p. 74 and Ap. ix.) As the tax levied in Domesday was *six* shillings per hyde, these *two* shillings were apparently the "ter-

official resembling the Graphio amongst the early Franks, and the Scandinavian Jarl, acting as a royal deputy, and retaining in early times the third part of the royal revenue and prerogatives. The substitution of this species of tenure for pure *duchas* or *odal* right must have been gradually brought about, as in Norway, by the growth and increase of the royal authority, *Oirrighs* and lesser chieftains often exchanging their earlier condition of partial or complete independence for that direct dependance upon the central sovereign authority which converted them into Mormaors and Maors; a change which was probably much facilitated by the great increase of wealth which must have resulted from extending taxation to the classes hitherto untaxed, and in which both Mormaor and Maor, like the royal officials of the north, must have participated.

Although the ancient Mormaordoms may have occasionally been co-extensive with the still older *Rikis*, kingdoms or "provinces of the Picts," such was certainly not the case with the earldoms of the feudal era. As early as the reign of Malcolm Ceanmore, and probably for some time before, Gowrie belonged to the royal family; and as Malcolm IV., who calls it his own, enumerates his manors "both in the Earldom and the Regality"—"tam de comitatu quam de Regali meo"—the whole province was evidently made up of an Earldom and a Regality.* As the *Termon*, or church-lands, of the Gaelic period of Irish history appear to have been divided into *Cowarb*-lands and *Herenach*-lands, the latter representing the *third* or portion peculiarly belonging to the Herenach, who was answerable for the exaction of the Cowarb's dues and

tius denarius comitis," which Henry may have wished to consider as inalienable from the land as in the shires of Nottingham and Derby—or in Fife—and to appropriate wherever there was no earl.

* *Chart. Scone* 7. I use the term *Regality* here in the sense in which it is found in the charter, that of the district immediately under the royal authority; but at a later period the Regality was a district in which the holder exercised the highest prerogatives of the crown, including originally "the four pleas," often having a complete court of his own, with Seneschal, Chancellor, Chamberlain, and other officials, in imitation of royalty—a Palatinate, in short. The subtle distinction sometimes drawn between a Regality and a Royalty belongs to a still later period.

rents from the remaining two-thirds of the district; and as in Yorkshire, Lincolnshire, and the united shires of Nottingham and Derby, whenever the fine of "eighteen hundreds" was levied for a breach of the king's peace, two-thirds belonged to the king and one to the earl;* so it would appear as if the old Scottish Mormaordoms were very similarly divided into the Mormaor's portion and the king's, subsequently known as the Earldom and the Regality, over both of which the "Great Thane" exercised the office of royal deputy or steward, though "the Earldom" was more peculiarly his own. In theory, probably, the whole of ancient *Scotia* was thus divided into Mormaordoms, each made up of an Earldom and a Regality—to use the language of a later era—and subdivided into Thanages, administered by Maors, and exhibiting similar features on a lesser scale; a dignitary, whose signature is often found appended to the earlier charters as judge of the earldom, holding office by the side of the Mormaor, and corresponding to the judge or Brehon of the thanedom, but of greater importance. In practice, however, many of these districts were entirely in the crown, the king retaining both Earldom and Regality in his own hands, as in the instance of Gowrie, in which case the Maors would have held their thanages directly of the king without the intervention of a Mormaor. As in England the earlier privileges of the Earls appear to have been gradually commuted—"bought up" as it were—for grants of land held by the ordinary tenures of knight-service or fee-farm, so in Scotland the progress of feudalism seems to have confined the Earls within the limits of their own immediate districts, the Earl of Fife alone being privileged to "exact his rights" as king's Maor over the whole province as of old: whilst the Regality was either granted out in freeholds held by knight-service, or in thanages

* *Domesday*, vol. 1, p. 280, 298 B, 336 B. *Vide* also the preceding note at p. 462. These "Hundreds," as elsewhere noticed, were of *ores*, and apparently "long hundreds" and "ores of sixteen," as 120 ores of 16 pence equal exactly 8 pounds, the value fixed by the Normans on "the Hundred." The ore of 16 pence was current throughout the whole of the centre and north of England, and over Scotland.

held by rent and Scottish service, and confirmed by charter—or remained in Demesne, both Demesne and thanages being withdrawn from the jurisdiction of the Earl and placed under that of the *Vice-comes*, an official who must not be confounded with the modern English Sheriff. The Earls within the limits of their earldoms also appointed their own deputies or *Seneschals*, who from the reign of William the Lion represented, in company with the "Baillies" of the higher clergy, their respective superiors at the county meetings, in which the royal *Vice-comes* presided; and long after the *earldoms* had passed away from the original families, the men of the *stewartries* of Strathearn and Menteith still mustered, at the opening of the seventeenth century, under the Lairds of Tullibardine and Lundie, the former unquestionably the representative of the ancient seneschals of Strathearn.*

* In the "Levy of Highlanders to assist Queen Elizabeth" in 1602, the Abbot of Inchaffray and the Lairds of Tullibardine and Lundie, for Strathearn and Menteith, were to raise 50 men; and in the "act anent Wapenschawings in the Highlands" of the same year, the inhabitants were to assemble "within the Stewartries of Strathearn and Menteith . . . in the presence of the Abbot of Inchaffray and the Lairds of Tullibardine and Lundy for Menteith and Strathearn. (*Col. de Reb. Alb.*, pp. 45, 47, Nos. x., xi.) From *Reg. Morav. Cart. Orig.* 13, 14, it is evident that Tullibardine first came to William de Moravia through his wife Ada, daughter of Malise, Seneschal of Strathearn, on the failure of whose male heirs the Seneschalship would have become vested in the Lairds of Tullibardine as representatives in the female line of the ancient Seneschals. Tullibardine was originally a thanage, held under the earl in fee-farm and by "Scottish service." (*Reg. Morav. Cart. Orig.* 17, 18.) By the conversion of the thanage into a barony the Thane became the Laird.

Appendix O.

BIATAGHS.

Amongst the vivid pictures of "the good old times," which Irish authorities of a few generations ago loved to elaborate out of materials sometimes, to say the least, somewhat scanty, none have been painted in brighter colours than that of the *Biatagh*, the royal Victualler, or Hospitaller. Necessarily of noble birth, he was obliged to possess 7 Vills, 7 plough-lands, 7 herds of cattle each numbering 120 head, and a house where four cross roads met. An ox, a sheep, and a pig were to be ever turning on his spit; wine and whey, milk and mead, were to be handed around each in its appropriate vessel; and in case of any failure in hospitality a heavy mulct was summarily inflicted. Such is a faint outline of the Biatagh as sketched by Dr. Lynch writing in the reign of Charles II., and quoting for his authority—Keating; yet so brilliant is the colouring of the reverend Doctor, that his latest editor, a little jealous apparently that such a phenomenon should be handed down as a "royal or public officer," questions in a note "whether such a charitable institution could exist except under the immediate superintendance of—the Church." In investigating such stories it is best to try them, if possible, by the test of stern reality, which in the present case can easily be done. According to the same authority there were 3760 *Villæ Hospitallitiæ*, or *Baille-biataghs*, in Ireland; and as the *Baille-biatagh* was a well-known division of the *Triocha-Ced*, or Barony, and generally supposed to contain 480 Irish acres, about *three million* statute acres must have been set apart for simply supply-

ing the wants of the passing traveller! When it is also recollected that, besides this amount of acreage for arable purposes, every *Baille* was supposed to include pasturage for 300 head of cattle, the absurdity becomes still more glaring.*

From the very earliest times hospitality to the stranger has been amongst the foremost duties in a certain stage of society, the proverbial hospitality of the Bedouin belonging to his condition as much as to his race; for the German, in the days of Tacitus, was quite as remarkable for his frank and open-handed generosity in this respect, as the Arab of the desert. A profuse and unstinted hospitality, however, is the mark of a rude and free state of society, characterizing the *Bedouin*, or roving Arab, rather than his kinsman whom he despises, the *Fellah*, or cultivator of the soil; and as the Germans, emerging from their earlier and ruder condition, became a dominant class planted amongst an elaborate, though effete, civilization, the rules and limits of hospitality were gradually laid down in various laws. *Tectum et focus*—shelter and fire—was to be denied to no one, the delinquent suffering in his person or his pocket according to his condition; and according to some of the northern laws, if a stranger who had been refused "fire and shelter" was found dead, his death was laid to the charge of the man who had driven him from his door. All who were travelling upon the royal business, foreign envoys, and nobles coming to court, might claim, in addition, *Mansio*, or provisions for themselves and retinue, the cost to be divided among the *Villani*, or tenantry of the Vill, whether the *Mansio* was "at free-quarters" or paid for by the travellers. The Burgundian noble who had received a royal grant was bound at his own cost "unâ nocte præparare mansionem"—to give *a night's feorm*—to ambassadors on their way to his sovereign. The private and humbler traveller then might claim as his right fire and shelter for a night, and

* *Camb. Evers.*, vol. 2, l. 14, p. 242-43. The Irish acre is said to have contained 7840 square yards, or about five-eighths more than the statute acre of 4840.

probably obtain food by paying for it; a privilege which long continued in force, as it seems to have been universally allowed at a much later period to give a night's shelter, without becoming "security" for the lodger. The distinction between bare shelter and *Mansio*, or *feorm*, was well known in the East two thousand years before the days of Charlemagne; for when the Levite was found in the inhospitable street of Gibeah, he said "there is no man that receiveth me to house, yet is there both *straw and provender for our asses, and there is bread and wine also* . . . . there is no want of anything:" and the old man replies "*let all thy wants be upon me*, only lodge not in the street . . . . and he brought him into his house, and gave provender unto the asses, and they washed their feet, and did eat and drink." *Tectum et focus* was all the Levite claimed, but the old "sojourner" (who, as an Ephraimite, could not be "a freeholder" amongst the men of Benjamin) gave him *mansio*—coigny, *coim-biadh* or convictus.*

The obligation of "hospitality" which was attached to all land that was not freed from it by special grant, seems to have been familiar to the Anglo-Saxons under the names of *Cuman-feorm*, and *Hospitorum refectio*—the *Hlaford-feorm* was supplying the lord with what he wanted—and in one charter the land is freed from "the

* *Leg. Burgund*, tit. 38. *Leg. Long.*, l. 3, tit. 4, sec. 2, 3, 4. *Capit. Carl. Mag. ad an.* 779, c. 14. *Judges*, c. 19, v. 18 to 21. Washing the feet was another wide-spread custom from the time of Abraham downwards (*Gen.*, c. 18, v. 4). Amongst the Welsh, according to Cambrensis (*Itin.*, c. iv.), water was invariably offered to the guest, his declining it marking his intention of only requiring passing refreshment, and not stopping for the night. Hence washing the feet of pilgrims in the olden time was equivalent to a welcome, and the words of our Lord, "I entered into thy house, *thou gavest me no water for my feet*," mark the discourtesy of Simon the Pharisee, whose only object was curiosity to know "whether this man were a prophet" (*Luke*, c. 7). From washing the feet, signifying an intention of remaining, the name of *Dusty-foot* was applied to the travelling merchant—the original of the modern *Haberdasher* or bearer of a *Haversac*—who without any permanent residence carried his goods from fair to fair; and the court for administering summary justice during the fair was generally known as "the Court of *Pies-poudrees*," or Dusty-feet, gradually corrupted into *Pie-powders*.

refection of the men whom we call in Saxon *Wælhfæreld* and their *fæsting*" (travelling strangers and their retinue), and from "English or foreign *rædefæstinge* (road retinue), whether noble or ignoble."* At a later period this charge became a most oppressive burden upon the Villeinage, particularly in unsettled countries where the law was enforced with difficulty; and towards the close of the thirteenth century things had come to such a pass in Norway, that a law was enacted against *Waldgastnung*—or the habit of strangers exacting free quarters—and it was ordered that a house should be set apart in every Vill for receiving strangers, who were to be charged accordingly—the beginning of *Inns* in the North. In Scotland, where the traveller's claim to "a night's feorm" appears in the old laws and charters under the Norman name of *herbary*, Waldgastnung was long familiarly known as *Sorning*, a word equally well known apparently amongst the Irish Gael. As the dwellings of the upper classes increased in size and importance, and *Heort*, in which Hrothgar's Thegns could feast and sleep without being inconvenienced by the addition of Beowulf and his fifteen companions, ceased to be "a world's wonder," the greater nobles and dignified clergy kept open house in their own *Hospitalia*, one of which, capable of containing six travellers, was the invariable appendage of every Culdee monastery; but as this good old custom died away, the name of *Hospitale* was transferred to the house of public entertainment or *Ho'tel*, where "a night's feorm" scarcely answers to the old-fashioned idea of "free quarters;" whilst the *Hospitaller*, or functionary attached to the Hospital, has long since dwindled into the *Hos'tler*.†

* *Cod. Dip. Sax. Æv.*, Nos. 258, 277, 288, quoted in *Kemble's Anglo-Saxons*, vol. I, p. 296-97. *Festingmen*, the *Festermen* of *N. P. L.* 2, means sureties or men bound *for* another, and in this case probably *to* another; *i. e.*, his *Hird* or retinue.

† "Lie sorner, hoc est vagantem per terras episcopi et ecclesiæ, compellabat ut ei victus et pecunia solveretur." Such is the description of "a sorner" given by Canon Mylne (*Vit. Ep. Dunk.*, p. 21). For *Heort* vide *Beowulf*, l. 135, *et seq.* Two of the exactions familiar to the Irish were *Bonnaght* and *Sorohen*, the former simply meaning a sum paid for exemption from giving free-quarters to the lord's *Bonnaghts—Boneddigion*—or clansmen strictly speaking, though the

The Irish Biatagh, then—the man who held his land by the tenure of *Biodh, victus*, or victualling—was simply a Victualler, or Hospitaller, in the sense of his liability, amongst other burdens, to *cuman-fcorm* as well as to *hlaford-fcorm*—to supply the wants of the passing stranger as well as those of his lord, and of all whom his lord quartered on him. He was a *hospes* in the sense of the men of *Rodoniacum*, whose "Abbas et Canonici assererent *servos esse ecclesiæ suæ.* Homines id penitus negaverunt, et sese tantum *hospites ecclesiæ et colonos* esse confessi sunt;"* and it would be nearer the truth, if instead of regarding these 3,000,000 acres of arable, with the additional pasturage, in the light of lands held for the purpose of hospitality, whether lay or clerical, they were looked upon as the amount of *rent paying* land in Ireland at some remote period.

name probably equally applied to his *Gall-oglach*, or men-at-arms; whilst the latter was evidently akin to the Scottish *sorn*, both being derived from the same source as the French *sejourner*. *Vide Ware* (*Harris*), c. 12.

* Charters quoted by *Ducange* (*Heinschel*) *in voc. Hospes.* The Hospes was the tenant at *feorm.* Amongst the obligations of the Irish *Sinnsear*, or Senior, by the Brehon law, he was to keep "a house of refection for the retinue of a king, a bishop, or a *Saoi.*" *Battle of Magh Lena*, p. 186.

Appendix P.

KALI HUNDISON.

In his sketch of the history of this period, Mr. Skene (*Highlanders*, pt. 1, c. 5) has identified Hundi and Melsnati, the opponents of Sigurd at Dungalsness, with Kenneth MacDuff and a certain Malsnechtan, whom he looks upon as Mormaors of Argyle and Ross; whilst he considers Jarl Malcolm to have been Malcolm MacMalbride, Mormaor of Moray. He subsequently raises Malcolm MacMalbride to the throne upon the death of Hundi (Kenneth MacDuff) at Monavaird in 1005, extending his reign to 1029, and regarding him as the father-in-law of Sigurd. He then places Malcolm MacKenneth upon the throne, making him a son of Kenneth MacDuff, and consequently identifying him with Kali Hundison; adding as his reason for departing from the generally received history, "the most remarkable coincidence between the Irish Annals and the Norse Sagas."

The only passages in the Irish Annals which bear upon the point in question are as follows, "Finlay MacRory Mormaor Mcroeb a filiis fratris sui Malbride occiditur" (*Tigh.* 1020);* "Finlay MacRory Ri Alban a sociis suis occisus est" (*An. Ult.* 1019); "Malcolm MacMalbride MacRory ri Alban mortuus est" (*Tigh.* 1029); "Malcolm MacMalbride MacRory mortuus est" (*An. Ult.* 1028). I venture to doubt whether they are sufficient to justify a

* Mcroeb must surely here be a clerical error for Moroeb; for *siol*, *sliocht*, *clan*, and *cenel* are found in the Annalists in the sense of a family or race, but never *mac*. Any theory founded upon the identification of the vague word *Righ* with *Monarch* rests upon a basis of sand.

departure from the beaten track, for if their authority is sufficient to place Malcolm MacMalbride on the throne, as I do not see how one passage can be relied upon and the other rejected, Finlay must have reigned before his nephew; and if Malcolm's reign only extended from 1020 to 1029, he can scarcely be identified with the Malcolm of the Sagas who gave his daughter to Sigurd, as the Jarl was killed at Clontarf in 1014. "Malbride, the first known Mormaor," writes Mr. Skene, in describing the succession of the Moray Mormaors, "is succeeded by his brother Finlay, Finlay by Malcolm son of Malbride, etc."* Malcolm, therefore, can hardly have fought at Dungalsness as Mormaor of Moray, yielded up the dignity to his uncle Finlay when the latter met Sigurd as "Jarl" at Skyda Myre, ascended the throne in 1005, sunk into a Mormaor and succeeded his uncle in 1020, and made his final exit as king in 1029. It was Malcolm Mac*Kenneth*, according to Simeon of Durham, who fought against Uchtred in 1005, and won Lothian in 1018; and as the Sagas only allude to one Malcolm, the father-in-law of Sigurd, their Malcolm must surely mean the historical Malcolm II., whose reign extended from 1005 to 1034. Kali Hundison was the successor of this Malcolm, and the son of a Jarl not of a king, a description exactly suiting Duncan, the grandson and real successor of Malcolm II.; and with Duncan accordingly I have preferred identifying him.

To the existence of a Norwegian kingdom at this period lasting for thirty years, during which Macbeth ruled as a tributary of Thorfin, I must equally demur. The chronicles of England, Scotland, and Ireland, are silent upon this subject, whilst the Sagas only say that Thorfin plundered the country as far as Fife and returned to Caithness, where he dwelt "amongst the Gaddgedlar," every year fitting out a fleet for a course of piracy—the normal summer occupation of an Orkney Jarl in that age. They make no allusion to his placing officers over the conquered districts, according to the invariable custom of the time; and in describing his proceedings after his victory, their

* *Highlanders*, vol. 1, p. 161.

expressions are no stronger than upon the occasion of his marauding incursion upon England, with his nephew Rognwald, in the days of Hardacanute, when after a great victory the Jarls are said to have ranged over all England in arms, slaying and burning in every quarter.* The conqueror of Scotland, the main support of Macbeth, would have scarcely been obliged to yield a share in the Orkneys to his nephew Rognwald, backed by a force of *three ships;* nor does Thorfin seem to have been of a character to allow his dependant to assume the title of *king*, whilst he was contented with that of *Jarl*. A king ruling under a Jarl would have been a novelty in history. The support given to Macbeth by the Norwegians, and the presence of a Saxon army at Lumphanan, are equally dubious; for the *Normans* mentioned in connection with Siward's expedition four years before, were Osbern Pentecost, Hugh, and others, who had sought refuge at the Court of Macbeth about two years before the appearance of the Anglo-Danish Earl.†

* *Antiq. Celt. Scand.*, p. 182.

† *Flor. Wig.* 1054.

Appendix Q.

ORDERICUS VITALIS.

A PASSAGE in Ordericus Vitalis is occasionally brought forward to prove that Malcolm tendered his submission to William through Egelwin bishop of Durham, after the failure of the attempt of Edwin and Morcar in 1068. It is as follows—"Malcolmus, licet ab Anglis requisitus fuerit, et validam expeditionem in eorum auxilium facere paraverit, audita tamen legatione pacis quievit, et cum præsule Dunelmi nuncios suos ovanter remisit. Per quos Gulielmo Regi fidele obsequium juravit; sic utiliter sibi consuluit, populoque suo multum placuit quod pacem bello præposuit." Without going the length of Lord Hailes, who says, "I hold Ordericus Vitalis to have been an ignorant blundering monk," I scarcely consider him an *accurate* authority for events occurring in England a generation or two before he lived. Thus he gives a *gossipping* description of an interview between Rufus and Malcolm in 1092, on the banks of the Forth, in which the latter acknowledges the gift of "the earldom of Lothian" from Edward the Confessor on the occasion of his marriage with Margaret! (Edgar's concession of Lothian to Kenneth, it will be observed, and the uninterrupted possession of that province as a feudal fief, was not yet known to the English historians.) Both kings return amicably into England, but on retracing his steps homewards, laden with gifts and honours from William, Malcolm is treacherously slain by De Mowbray and Morel to the inexpressible grief of the Red King and his court! In his mistakes about the sons of Malcolm, in his errone-

ous description of Malcolm Mac Heth as an illegitimate son of Alexander, in his blunders about "good queen Maud," and in many other instances needless to enumerate, there is a similar mixture of truth and error which should warn the historian to be cautious in using him as an authority where he differs from earlier and more trustworthy chroniclers. The passage in question is probably as far from the real truth as the others already noticed, both because he is the *only* chronicler who alludes to this submission of Malcolm, whilst Simeon and other earlier and better authorities than Orderic, mention the fact that Edgar and his partizans passed the whole of the following winter in Scotland, which the Conqueror would surely have provided against had he already received the submission of Malcolm; and because he *alone* passes over without notice the really important meeting between the two kings at Abernethy in 1072. If Orderic was so ill-informed about the affairs of North Britain at that period as to be ignorant of an event so well known and so important, his solitary and unsupported testimony can scarcely establish the truth of an occurrence unmentioned by better-informed writers; and the passage is probably nothing more than a confused and erroneous version of the events which actually took place in 1072, transferred, by one of his usual blunders, to 1068.

In support of a supposed successful invasion of Scotland, which he fixes at this period, Sir Francis Palgrave brings forward the following passage from "The Book of Abingdon"—"Rex Scotiæ Malcolmus subesse Regi Willelmo eo tempore detrectabat. Quasi coacto in unum exercitu, Rex filium suum Robertum majorem natu Scotiam sua vice transmisit; cum quo et plures Angliæ primates, quorum unus Abbas Adelelmus fuit, præcipiens eis pacem armave offerre. Verum Rex ille Lodoniis occurrens cum suis, pacisci potius quam præliari delegit. Perinde ut Regno Angliæ principatus Scotiæ subactus foret, obsides tribuit. Quo pacto inito Regis filius cum exercitu ad patrem hilaris repedavit." To this he appends the following note. "This important transaction, which

is related with great obscurity by Orderic, is told clearly and distinctly in the Book of Abingdon. In consequence of the Abbot being personally present, the compiler of that most authentic volume was without doubt better acquainted with the circumstances than other writers could be who had not the same sources of information. Lord Hailes in his text suppresses all notice of the invasion or of its consequences, but he satisfies his conscience by inserting the passage of Ordericus in a note without translation, but with a few remarks, in which he informs us that he holds 'Ordericus Vitalis to have been an ignorant blundering monk'—a summary mode of refuting historical evidence."*

The date of this expedition, in which Abbot Athelm took part, is placed by Sir Francis in 1069, upon his own sole and unsupported authority. It will not be found in the Book of Abingdon, nor does Sir Francis give any reasons for his choice of the year, though he has probably fixed upon 1069, in order to elucidate "the great obscurity of Orderic" by the assistance of this passage. It remains to be seen how far he is justified in his selection. Abbot Athelm succeeded Abbot Ealdred, who was deprived of his Abbacy and committed to the charge of Walkelin, Bishop of Winchester, about the same time as Egelwin was captured and deprived of the See of Durham. Walkelin was appointed to his See on Whitsunday in 1070, and Egelwin was deposed in 1071. Athelm therefore must have held the Abbacy of Abingdon between 1071 and September 1083, the date of his death; and the expedition in which he accompanied Robert must have taken place *between those years.* The passage in question, then, can have no reference to the events which Orderic, who alludes to no invasion, supposed to have happened at an earlier date, and his obscurity remains as dense as before. The following extract from Simeon of Durham, settles the real date of Robert's expedition to have been 1080, "Quo anno idem rex Willielmus autumnali tempore Rodbertum filium suum Scotiam contra

* *Palgrave's Rise and Progress, etc.*, vol. 2, p. cccxxxi.

Malcholmum misit. Sed cum pervenisset ad Ecclesbreth, *nullo confecto negotio* reversus, castellum novum super flumen Tyne condidit." That this was the expedition in which Abbot Athelm participated is further shown by a passage in the Book of Abingdon, immediately following the notice of that occurrence, "Iterum *ad Walos* exercitus dirigitur;" for it may be gathered from the Saxon Chronicle that William marched against the Welsh in 1081. Upon the different accounts given of the results of the same expedition by the almost contemporary Simeon, the best informed chronicler of the north, and by the writer in the Book of Abingdon, which from internal evidence cannot be fixed at an earlier date than the reign of Henry III., I need make no comment. It only adds one more to the many instances of the manner in which the bias of partial writers has distorted the accounts of an earlier period. The successful invasion of Scotland falls to the ground, and a fortunate man must Lord Hailes be reckoned if his conscience was never burdened with a heavier sin than that of omitting all notice of an expedition which—never took place.*

* *Lib. Ab.*, l. 1 and 2, p. 134-6. *Sim. Dun.* 1070-71, 1080. *Chron. Sax.* 1081.

Appendix R.

THE THEORY OF DISPLACEMENT.

Different opinions are current in different ages, and there was a time when it would have been considered a heresy to trace a great Scottish name to any but a strictly Scottish source, the Norman *Flahald* being accordingly re-named *Fleance*, and assigned as an heir to Banquo, figuring as Thane of Lochaber. Since that time the tide has flowed in the opposite direction, and it has been argued as if every Scottish name of note were to be traced to a foreign settler; whilst it appears to have been the singular destiny of that part of Scotland answering to ancient *Scotia*, that the real ancestry of the bulk of its population should be invariably ignored. Here were the *Gwyddel Ffichti*, pre-eminently the Gaelic *Picts*, and the leading division of the Pictish people, whose descendants, devoting their ancestry to extermination, resolutely declared themselves Gaelic *Scots*. Time passed away, and after the Lowland Scottish dialect penetrated over all this portion of northern Scotland, its inhabitants, forgetting the language of their forefathers, called all who spoke it *Erse* or Irish; the mountaineers were looked upon as an Irish race, and at length the very citadel and stronghold of *Alban's* Gaelic kings was supposed to have been peopled by a race akin to the population of the Lothians—though totally unknown to Beda.* Keating's convenient theory of a pestilence

* This is very much traceable to a certain feeling between different parts of Scotland, which may be said to have originated in the rivalry between the northern and southern Picts; to have been reproduced in the constant hostilities between *Scotia* and *Moravia;* and to have been perpetrated in its

that swept away every plebeian of *Milesian* origin, thus leaving Ireland to the nobility alone, will now probably only provoke a smile: they were an inconvenient race for genealogists, these plebeians, and were thus summarily dealt with. But the theory is scarcely less extravagant which supposes ancient *Scotia* to have been filled with a population unknown to history—for when did they arrive? untraceable in topography—for where are their vestiges? and who, if they ever really existed in this quarter, must have exhibited the unwonted spectacle of a dominant people, strong enough to hold their ground throughout the leading provinces of the kingdom, yet submitting to the rule of a king and a nobility sprung from the very race who they are supposed to have driven from the soil! Where was the strength of the ancient Gaelic kingdom of Scotland if it were not in this very quarter?

Extermination seldom if ever follows upon a conquest. Roving and savage tribes, deprived of their hunting grounds by the encroachments of far more highly civilized races, may gradually disappear, dying out like the aborigines upon the continent of America: but when a settled population is conquered, the proprietary either emigrate, disappear, or sink into a subordinate situation, whilst the bulk of the people remain under the invaders in a position comparatively slightly altered.* It is only, however, after a conquest of a certain character that any change of this description occurs at all; for where a settled proprietary is not thus displaced, it may become absorbed amongst another race, and all difference of origin be thus forgotten, but it will certainly not die out and perish of itself, nor will Scotland afford any instance to the contrary. No conquest of any description, that could account for a wide

latest form in the antagonism between "Highland and Lowland," or primitive and feudalized Scotland.

* Thus the settlements of the Teutonic tribes in England appears to have occasioned a considerable emigration across the Channel, which seems to have been encouraged by the rulers of the Franks. The establishment of the Scottish power in Strath Clyde, and encroachments from other quarters, gave rise to a similar migration from that quarter to North Wales. There is not a trace of any such emigration attending the measures of David or William.

displacement of the native population in favour of foreign settlers, is traceable at any period of authentic history when such a settlement is supposed to have taken place. The northern wars of Malcolm Ceanmore represent a struggle between *Scotia* and her southern dependencies against *Moravia*—between the population of the south and east against the people of the north and west: but of the foreign bands, who are sometimes supposed to have secured the victory for Malcolm, where is there a trace in history? Where are the lands with which they were rewarded, and by what tenure did they hold them? Moray, the great hereditary province of the rival family, was not forfeited before the reign of David; and it was scarcely out of the property of his own adherents that Malcolm distributed his rewards. Mar, Buchan, Angus, Strathearn, and Menteith, with the great lay Abbacy of Brechin, are found long after this period in the hands of native magnates; whilst Atholl and Fife were conferred, not upon the supporters of a policy hostile to the native race, but upon branches of the reigning family, or upon a family devoted to its support. Malcolm may have availed himself of foreign assistance, and there was undoubtedly an immigration in his days into his kingdom; but, to judge from the example of Cospatric, the majority of his new subjects were planted upon the southern frontiers, amidst a population of kindred origin and customs, where the same hostility to the Norman rule which prompted their emigration, would secure their fidelity as watchful guardians of the English marches.* Twice subsequently were "forcigners" expelled—from northern Scotland probably—not a numerous and settled population, who would unquestionably have defended their rights, and a sanguinary struggle would have arisen from such a measure; but the Court and personal friends of Margaret; and the immediate followers of Duncan II.—just as "the Normans"

* The De Morevilles held Teviotdale as a Regality, as well as the hereditary Constableship. The earliest Constable on record was Edward, son of Siward, and if the lands and office passed, as was often the case, by marriage—if Teviotdale had once been held by Edward—it would mark that another foe to the Norman rule had been planted upon the southern frontier.

were driven, some thirty years before, from the kingdom of the Confessor. Edgar was reinstated by his kinsman the Atheling, but it will scarcely be asserted that the army provided by Rufus was settled permanently upon the soil of Scotland; and nothing more is known of his uneventful career. Alexander resented a conspiracy against his own person by a *Northern* war; the Spey, the frontier river between *Scotia* and *Moravia*, was again the scene of the contest, and the king drove his enemies "over the Stockford into *Ross*." There is an indistinct vision of the forfeiture of one great magnate on this occasion, Malpeder MacLoen, styled "Mormaor of the Merns," and henceforth there is not a trace of treasonable disaffection or forfeiture on a great scale throughout the whole extent of *Scotia*. The Earl of Strathearn, indeed, participated in the mysterious conspiracy of Perth, but he was not forfeited, as the *Moravian* Earl of Ross appears to have been—probably because his share in the attempt may have been limited to changing the counsellors of the sovereign—and *Galloway* was the seat of the war which followed upon the defeat of the attempt.

No better test can be applied in a question of this description than the composition of the *juries* which pronounced "the verdict of the neighbourhood," and were always made up of the "*probi homines*," the gentry and proprietary of the district. The earl's son, the thane's son, the abbot and his son, the judge or his brother, and other similar notabilities of native origin appear in Angus, and generally along the eastern coast and in *Scotia*; whilst in Renfrew, when Patrick de Blantyre was served heir to his ancestral barony, the jury to a man were of Gaelic origin, and must have been "his peers," barons or freeholders by charter. Renfrew had been given as a barony to the Steward, but the *probi homines* seem to have been little affected by the grant. The instances thus quoted are all taken from the age succeeding the reigns of David and William, affording ample testimony that the native proprietary in the settled districts of Scotland had been little interfered with by the measures of those

sovereigns. The case was different in eastern Ross and Moray, where the disaffected had been rooted out, their lands forfeited, and settlers planted widely in their place. Here the juries were of a mixed character, Norman and other names mingling with, and generally, indeed, predominating amongst those that testify to a native extraction. But the confiscations in *Moravia* were local and partial, and can scarcely be supposed to have affected the loyal proprietary upon the eastern coast, and in other parts of *Scotia*. The destructive northern wars of the Conqueror have stamped their results in letters of blood upon the Yorkshire survey in Domesday, but what effect did they produce upon the allodial Gavellers of Kent, or even upon the neighbouring Ridings of Lincolnshire?*

* *Act. Parl. Scot.*, vol. 1, p. 81, 88-92. Alluding to the "Perambulation of the lands of Balfeith," Mr. Innes says, "This jury of Celtic gentlemen of the low country of Angus and Mearns contrasts notably with the lists of burgesses of Dundee and Aberdeen of Norman and Saxon names and Teutonic lineage, occurring about the same time." *Sketches*, p. 147, note 1. In the thirteenth century, then, the native proprietary along the eastern coasts were not yet eradicated. When then were they displaced? As the bulk of the population connected with the soil to the northward of the Forth seem to have borne Celtic names, it may be concluded that the majority of the rural population, from the earls downwards, was of native origin. The burghers were originally almost invariably of alien extraction, but a civic population never migrates into the country, whilst there is always a constant stream of population pouring from the rural districts into the towns. What a tide has been pouring into Glasgow from the mountains for many generations past; yet how many of the good citizens have emigrated into Argyleshire? The burghal laws encouraged this emigration, for contrary to the principle in force amongst the proud burghers of London, by which a man of Villein extraction could not share in their privileges (a veritable relic of the old allodial feeling about the *Vier Anen*), every bondman who held a burgage tenement as his own for a year and a day became free of the burgh. Such emigrants from the rural districts in early times brought no surnames with them, but were known from their vocations, they and their descendants soon learning to speak the language of the towns; and as the upper classes became feudalized and were known from the names of their properties, so the lower orders, who found their way into the towns, were gradually *Teutonized*, spoke Lowland Scotch, and were frequently known by the Teutonic names of their trades. So far from the old Scottish race in these quarters being driven into the Highlands, it would seem rather as if a vast number from the Highlands had been absorbed by the civic population. The original Scots were no more driven out of the Lowlands by the advance of the Teutons than have the original Franks been driven out of Salic France by the encroachments of the "Romans."

It was the charter and feudal tenure which gradually converted the native proprietary of *Scotia* into "lairds of that ilk," henceforth undistinguishable amongst the general feudal baronage. At the battle of the Standard, Earl Malise of Strathearn was the champion of the anti-feudal combatants. Forty years later his grandson, Gilbert, was as thoroughly a feudal baron as the latest Norman settler, granting charters sealed with the device of a mounted knight in armour, and with a novelty yet more unusual, a shield emblazoned with arms.* It is scarcely possible to doubt that a similar change was in progress in many other parts of the kingdom besides Strathearn. Not only in Scotland, but throughout Europe the shifting patronymic marks the prevalence of the early benefice, when all who claimed a provision in right of their birth and descent were known by the name of their immediate ancestors, the *vier anen* giving the title to the birthright which was subsequently founded on the charter. It was not until after the benefice became the feud, after the temporary and renewable provision became the inalienable and hereditary property, that it conferred a more or less permanent name upon its owner, all early surnames being invariably "of that ilk"—the proprietor was named from his property. At the opening of the twelfth century, or at any rate at the close of the eleventh, the territorial surname was unknown throughout Scotland from the Pentland Firth to the Tweed; and the same might almost be said of England. Very few names, indeed, of this description were brought into England by the followers of the Conqueror—none certainly existed before their arrival—and wherever a Norman name is found that does not occur in Domesday, it may be safely assumed that, however old its standing, it represents a later emigrant from the Continental duchy rather than one of the combatants at Hastings. The descendants of the latter generally adopted the names of

* *Innes' Sketches, etc.*, p. 219, 113, note 2. The seal does not appear to have been in general use amongst the *probi homines* until some time later, for it was after this period that, at one of the assemblages of the *Visnet*, only four out of the number appended their seals, "because the others have none."

those properties in England which they had won with the sword. Many a Norman name penetrated into Scotland, the majority territorial, whether derived from English or Norman fiefs, which would seem to place their arrival in the reigns of David and William. Others again settled in Scotland before they had acquired a name of this description, the race of *Flahald* assuming a name from their hereditary office of steward—for the son of Walter Fitz Alan was known as Alan Fitz Walter—whilst the appellation of *Masculus, le Mâle,* attached to a family of great importance in early times, seems to have been perpetuated with the old broad pronunciation under the form of *Maule.* The race often gave the name; *Fleming* and *Inglis* would have appeared in the charters as *Flandrensis* and *Anglicus*: the first ancestor of the great border clan of *Scot* must have stood out amongst the Saxons of the Lothians as *Scotus,* the Gael; whilst the name of *Walensis,* or *le Waleys,* given to the progenitors of Wallace, marks the forefathers of the great Scottish champion to have been Cumbro-Britons of Strath-Clyde.* From the frequent occurrence of an addition, such as Flandrensis, to the name of the first recipient of a charter, it may be assumed, that in its absence, and where no distinct territorial surname is attached, the recipient was usually of native extraction, especially if in a well-affected district—the first holder by charter, but not necessarily the first of the race in Scotland.

It is sometimes, indeed, rather hastily assumed that every territorial surname denotes the presence of a foreign settler, when in reality it is only the mark of tenure by charter. There can, of course, be no doubt about names brought from another land, whilst in the case of many a surname derived from places in Scotland, it would be not a little difficult to pronounce with any certainty an

* Richard, called sometimes *le Waleys*, at others *Walensis*, a Vavassor under the Steward, granted the lands of Godeney in Galloway, and Barmoor in the parish of Ballinclog, to Melrose. *Lib. de Mel.*, 69-71, 224-226, 325-326. Either from error or carelessness, the *le Waleys* of the reign of William is written *de Walays* and *de Wallibus* in the charters of the time of Alexander III.

absolute opinion. There are sufficient instances, however, to show the rashness of any sweeping conclusion such as that to which allusion has been made. The family of *de Strathbogie* sprung from a son of the Earl of Fife; that of *de Ogilvie* from a junior branch of the Earls of Angus, whose representative at present in the male line is the Earl of Airlie. Roland *de Carrick* received a grant of the Seneschalship and *Kenkynol* of that district from Earl Nigel when the earldom passed with his daughter to another race, and the name of De Carrick appears amongst the settlers planted in Moray.* Roland was scarcely of foreign origin, but rather a near relative of the Earl, and probably the heir male of the family. The *de Abernethies* and the earlier *de Brechins* were lay Abbots of their respective districts.† Were Abbacies conferred in this manner upon the Norman followers of David and William? Names like *de Ergadia, de Insulis, de Atholia, de Galloway*, speak for themselves. In many others, again, there is a strong presumption of native origin, as, for instance, in *de Scone*, a name often occurring in the earlier charters. Malothen appears in the reign of Alexander I. as the first known *Vice-Comes* of Scone, and the family of *de Scone* were probably descendants of the hereditary Sheriff. The

* *Robertson's Index*, 134, 136. The grant was confirmed by Alexander III. in 1275, and again by Robert II. in 1372.

† *Reg. Vet. Arb.* 34, 35. In the grant of the church of Abernethy to Arbroath, where the royal charter says, "cum medietate omnium decimarum provenientium *ex propria abbatis de Abirnythyn*, et cum omnibus decimis territorii de Abirnythyn præter decimas *de dominio ipsius abbatis* quas keledei de Abirnythyn habere solebant;" that of Lawrence de Abernethy says, "cum medietate, etc., *ex propria pecunia mea et heredum meorum*," and "præter decimas *de dominio meo de Abirnythyn*, etc." Were the family of Abernethy to put in a claim to represent Nectan, the correspondent of Ceolfrid and original founder of "the stone church built after the Roman fashion" at Abernethy, their claim would really rest upon grounds fully as probable as many that support admitted pedigrees. Chalmers, of course, makes Abbot Lawrence the first "Saxon" settler, but his real character has not escaped either Mr. Joseph Robertson or Mr. Innes (*Vide Spalding Miscell.*, vol. 5; *Ap. to Pref.*, p. 75; and *Sketches*, p. 149). The Abbots *de Brechin* are continually occurring in the charters of Arbroath (1, 70-74), and "Johannes Abbas de Brechin et filius ejus Morgundus," the last of the male line, were alive in 1219. (*Act. Parl. Scot.*, vol. 1, p. 81.) It is scarcely correct to style *Abbe* their surname.

first known ancestor of the Durwards was Malcolm de Lundin, whose son Thomas, the first Durward, confirmed the grant of his mother and grandfather—the father's name is not mentioned—to the Culdees of Monymusk. The name of Malcolm, and the connection with the Culdees, point apparently to a native origin; whilst the office of Durward, which raised the family to distinction, was acquired, probably, by the union of Malcolm with Thomas's mother.*

It will scarcely be disputed that in later times the Scottish *laird* was often better known by the name of his property than by his own surname, and nowhere was this custom more prevalent than in the Highlands after the earlier patronymic had been superseded. Centuries before the patronymic had thus disappeared from *Moravia* it had been displaced throughout the feudalized portion of ancient *Scotia;* but as the change occurred before the rise of surnames, the fief supplied the family name, and after the lapse of a few generations all recollection of kindred origin was obliterated, or survived only in vague local tradition. *Stewart* of Appin and *Stewart* of Garth must once have had a common ancestor, but had they received their fiefs before the establishment of surnames, who would have known, after the lapse of a few generations, that *de Garth* of Perthshire was akin to *de Appin*

* *Reg. Prior. St. And.*, p. 369. There are many other territorial surnames which there seems the strongest reasons for assigning to native Scots. *Dufyth* de Conan, for instance, *Duncan* de Fernival, *Macbeth* de Dych, *Angus* de Auchenross, amongst the *probi homines* already quoted; *Macbeth* de Libberton, *Gilbert* de Cles, *Gilbert* de Smitheston, *Constantine* de Lochore, all of which I have taken at random from a page in the Dunfermlyn Registry. The bulk of the *mesne*-tenants were probably the original proprietary, whether to the north or south of the Forth; whilst great Norman barons, personal friends of David and his successors, received large grants, and were placed upon a footing with the earls as *majores barones*. There is a charter to which Lord Hailes alludes (vol. 3, p. 377) which, if it can be relied upon, affords an excellent example of a family of native Gaelic origin assuming a territorial surname from their property. According to this charter, dated the 5th of October 1227, Alexander II. confirmed to Alan de Lani and Margaret de Lani, his wife, daughter of the deceased Gillespie de Lani, the lands which Margaret had resigned "per fustum et baculum," and which her ancestors had held in virtue of a little sword given by King Colin to Gillespie Mor.

of Argyle? Three great families in succession held the lordship of Lorn, and all Argyleshire is still full of Mac Dougals, Stewarts, and Campbells, offshoots of the families in question. The same may be said of Atholl, in which the Robertsons, the Stewarts, and the Murrays, names long prevalent in the district, represent the families which once held the earldom, one of them still holding the dukedom. Many a Sutherland has branched off similarly in the north, and the western coasts are peopled with the descendants of different Lords of the Isles. The greater the name in Scotland the more numerous is it, and more widely spread, and it can be hardly doubted that a similar process must at one time have been going on all over feudalized *Scotia*, before the establishment of separate surnames; for it would be strange indeed if no offshoots branched off from families which sometimes held their earldoms for centuries. A faint clue exists in Fife through the old privileges of the "clan Mac Duff," which were certainly claimed by the families of *de Spens* and *de Arbuthnot*, whilst the Seneschalship was held by *de Blair* and *de Balfour*.* The latter office seems to have been invariably conferred upon a near kinsman, though in either case it may of course have been acquired by marriage. Little more can be said on the subject, but had the surname existed in Scotland distinct and separate

* *Innes' Sketches*, p. 215, note 1. The first known members of the Arbuthnot family were Hugh of Swinton and his son Duncan, who acquired the "thanedom" from Walter Olifard, and ejected the "Scolocs" from their portion of the property most unceremoniously. At the inquiry which was held in consequence, one of the witnesses deposed to recollecting *thirteen* different Thanes of Arbuthnot, a number which may have arisen out of the old test of "gentle birth" amongst the Scots—connection with a Thane. Just as it was the object of distant kinsmen to win their spurs in the service of a great Baron, so the Scottish noble of an earlier time may have given the *tack* of a Thanage to his distant cousin to preserve his children from losing "free-right," by thus qualifying them to rank as "sons of a Thane." The "Lex Clan Mac Duff" was administered by three judges, as amongst the Welsh, and as in the trial about the lands of Kirkinnes in the reign of David (vol. 1, p. 279). These judges were the Earl of Fife, the Lord of Abernethy—evidently in virtue of his character of *abbot*—and the priest of Wedale. What connection had the Clan Mac Duff with the latter district? *Vide Spalding Miscell.*, vol. 5, p. 212, and *Ap. to Pref.*, p. 75.

from the teritorial appellation two or three centuries before it actually arose, many of the old Fifeshire families would, I should imagine, have had little difficulty in tracing their descent from the Premier Earls of Scotland.

The whole policy of David and his successors appears to have been founded on a principle diametrically opposed to this "theory of displacement." It was his object to *introduce* but not to *enforce* feudal tenure; to *tolerate* rather than *perpetuate* Scottish service. He never made his Norman nobles *Earls*, but Barons, "with the rights and custom of an Earl; and there must surely have been a reason for his adopting such a course—for giving "brevet rank," if I may so express myself, to his foreign nobles, instead of making them Earls at once. This reason will probably be found in the characteristics of the different tenures. When Alexander II. levied fines for non-attendance in the host, these fines were only exacted from tenants by Scottish service, Earls, Thanes, and Ogtierns, for the Baron is not alluded to. The Earl was answerable to the king alone; the Thane to the king or earl; the Ogtiern to the Thane or—*Miles*. Hence it may be gathered that the introduction of the feudal tenure of knight-service would at that time have reduced the Thanes to the footing of Ogtierns. An alien Earl, holding by feudal tenure, would have had to conquer his earldom from the proprietary.

No such result followed from the earlier tenure of the Earl, Count, or Mormaor, who was simply a royal deputy interposed between the proprietary and the sovereign, and not interfering in any way with existing tenures. He was necessarily, however, a man of influence enough to enable him to carry out effectually the authority thus delegated to him; and such influence could only have been acquired in one of two ways. A newly-created Earl must either have been a member of some native race to which the native proprietary were accustomed, or willing, to look for their *Cen-cinnaeth*—he must have been in some way united to them by the tie of blood; or, if an alien, he must have been supported by an alien force—a *feudal* force, after the

reign of David—and the result would have been a rising amongst the proprietary. Such was probably the true reason why Bruce, Fitz-Alan, De Moreville, and other great Norman nobles, never appear as Earls, but only with "the rights and custom of an Earl." Holding by Scottish service they would have been powerless without a kindred "following;" whilst a feudal tenure would have interfered with the proprietary rights of the very class which formed the military strength of the Earldom. History clearly shows that, as the power of the sovereign extended over the west, it was his policy, not to eradicate the old ruling families, but to retain them in their native provinces, rendering them more or less responsible for all that portion of their respective districts which was not placed under the immediate authority of the royal sheriffs or baillies. In Galloway, Argyle, and Ross, the old races were thus confirmed in authority, and the result was comparative peace. In Moray the old race was proscribed; feudal tenure was purposely introduced, wherever it was possible; and the result was *rebellion for a century*. Elsewhere a similar policy would have unquestionably produced corresponding results. Confiscation would have been followed by rebellion, and the policy which spared the native races in the once disaffected districts of Galloway, Argyle, and Ross, would have scarcely risked such an alternative amongst the loyal proprietary of *Scotia*. Intermarriage gradually familiarized the Scots with feudal barons holding earldoms, and knights holding thanedoms; but I think it very doubtful if either earldom or thanedom were originally conferred upon baron or knight; or if any earldom was held by feudal tenure until Bruce gave Moray to Randolf, to be held by *both* knight service and Scottish service.*

* Of the three earldoms which may be said to have been called into existence during the twelfth and thirteenth centuries, Carrick was unquestionably given to a family of native origin. Lennox, a portion of the old Cumbrian principality, seems to have been separated, according to the usual policy of the period, into an earldom and a sheriffdom about the commencement of William's reign, that king, in one of his earlier charters, addressing his "*sheriffs* and bailiffs of Galloway, Carrick, and Lennox." (*Reg. Glas.* 25.)

The theory of displacement however is not confined to Scotland beyond the Forth, and it is equally assumed

Its early history exhibits all the peculiarities of a Gaelic earldom—in the names and titles of members of the ruling family, such as Malcolm *son* of the earl, Dougal *brother* of the earl; in a certain repugnance to tithes and dues; and in that tendency in the actual earl to dispute the validity of his predecessor's grants in perpetuity, so noticeable also in the early history of Strathearn. It was at one time in the hands of Earl David, whose grant of Campsey to the Abbey of Paisley was confirmed by William in the lifetime of Richard de Moreville, and during the episcopate of Bishop Jocelyn of Glasgow, *i.e.*, between 1174-89. Campsey was subsequently given by Earl Aluin the younger to the see of Glasgow, during the lifetime of William and the episcopate of Walter, or between 1207-14. Maldouin, who had confirmed his father's grant as heir, subsequently as earl confirmed the prior grant of David; and as the dispute which arose in consequence between the abbey and the see was arranged in 1221, he must have succeeded his father before that date. The two Aluins then must have held the earldom during the reign of William and the lifetime of David, which appears inexplicable except upon the supposition that the latter held it in ward during the minority of the younger Aluin—an assumption which seems borne out by the fact that the donation of Earl Aluin was considered valid, rather than the previous grant of Earl David, for the see of Glasgow retained possession of Campsey. (*Lib. de Calc.* 222, 226, 230, 386. *Reg. Glas.* 101, 116.) The elder Earl Aluin is sometimes identified with Alwyn Mac Archil, a witness to various charters in the reigns of David and Malcolm IV.; but as his signature never appears as Earl of Lennox, and as his family seems to have been carried on by "Gille-anrias son of Alwyn" who witnessed, amongst others, the confirmatory charter of Scone in 1163 (*Lib. de Scone* 5), it is highly improbable that he could have been the Earl Aluin who left, at his death, a son who was a minor in 1174. His father Archil has also been identified with a Northumbrian Thegn, Arkil son of Egfrith, who fled from England during the troubles following the Conquest. This Arkil married Sigrida, a daughter of Egfrida divorced by Earl Uhtred soon after 1006, and the widow of Earl Eadulf killed in the reign of Hardicanute, and he was consequently a contemporary of that king, of Edward the Confessor, and of Duncan the First! He had a *grandson* who was at feud about lands *in England* shortly before the treatise about "the Siege of Durham" was written—at the close of the eleventh, or the opening of the twelfth, century apparently (*Sim. Dun. in Twysden*, pp. 80-82, 204-5). It is scarcely necessary to point out the impossibility that a man who was married about 1040, who might have been the father of Malcolm III., and whose *grandson* was of age, and apparently the representative of the family, about the close of the eleventh century, could have left a *son* living during the reign of that king's *great-grandson*, much more a *grandson who was a minor between* 1174-89! Names are often but a treacherous foundation for theories, and those of Gilbert, Gillemichael, Gilleon, Gospatrick, and Crinan, which appear amongst the Northumbrian Thegns in the pages of Simeon, prove, not so much a settlement of native Scots in Northumbria, as a considerable intermixture of race before the Conquest between Forth and Tyne, the result probably of intermarriages

that the Lothians were thoroughly re-settled and colonized by a tide of immigrants from beyond the southern frontier. Orm, Leving, Doding, Edulf, Edmund, and Elfin—though the latter name, like that of Dunwallon "the faithful thegn," who figures in so many of the Kentish charters, has rather a British sound—are all brought from the south to fix their abode at, and stamp their names upon, Ormiston, Levingston, Duddingston, Edilston, Edmonston, and Elphinston. Thor, the ancestor of the Ruthvens, Warnebald of the Cunninghams, Maccus or Magnus of the Maxwells, are equally traced to a foreign stock. But where, may it be asked, were the descendants of the men who had held the land as their own from the days when Edwin built his *Burh* upon the Forth, full five hundred years before?* Beyond the river the Highlands form a

between the upper classes. I see no reason to question the native origin of the Earls of Lennox. Sutherland, at the opening of the thirteenth century, was in the hands of Hugh son of Freskyn, who, about fifty years before, had witnessed a charter of David to the See of Glasgow; and from the grants of Hugh and his son it would seem to have been held by Scottish service. In 1275 there had been two earls, William, then living, and his father of the same name; but in 1237 it was still a lordship. (*Reg. Morav. Pref.* 1-4, c. 121. *Reg. Glas.* 11.) According to the Orkney pedigree (*Lib. Ins. Miss. Ap.* 38), which, in its earlier portion, is extremely accurate, the *earldom* of Sutherland was created in the days of Magnus, the successor of Earl John Haraldson. If this is correct, it may have been the punishment—or the cause—of the share taken by Earl Magnus in the expedition of the Norwegian Haco. The possession of Strathbrock in Linlithgowshire, and the numerous settlers planted in the forfeited earldom of Moray, favour the theory of the southern, though not necessarily of the alien, descent of this family; whilst the absence of either territorial or national designation attached to Freskyn and his sons, the name of *De Moravia* which they carried with them into Sutherland, and the tradition of a native origin which seems to have been long preserved in the family (*Family of Kilravock*, p. 61), may be mentioned as arguments in favour of the opposite opinion. Nor must it be forgotten that it was the royal policy at this period to oppose the Scottish to the Norse element in the north and west; and it would have been quite in keeping with such a policy to make over the new lordship of Sutherland, the Highland, and thus, probably, the more peculiarly *Scottish* portion of the old Norwegian earldom of Caithness, to a family whose descent, either on the father's or mother's side, might in some measure identify them with the prevailing population in that quarter.

* The topography, charters, etc., according to Mr. Innes, "leave no doubt that a Teutonic dialect was the universal spoken language of Lothian, Merse, and Teviotdale, from the time of David I." I should be inclined to

convenient receptacle into which all the dispossessed proprietary of native Gaelic origin are supposed to have been "pushed"—such is the word sometimes used. It is not specified, however, where the native proprietary of Teutonic origin were "pushed" out of the Lothians, perhaps because it might be inconvenient to find a place for them. When David laid down the enactment that if a man were *disseized*, or dispossessed of his property, he was no longer to challenge the aggressor, but to appeal to the verdict of the neighbourhood, it may be gathered that there were rights of property before his reign; and that the loss of such rights in individual cases was resented by an appeal to the sword. Yet are we called upon to believe that, whilst such was the legal custom in individual cases, a general measure of *disseisin* was gradually carried out amongst a population never backward, but rather over-ready, in making such an appeal, and over the whole face of *Scotia* and the Lothians—over the whole of the well-affected portion of the kingdom! a measure so vast that not a name of any note has come down to the present day that can be traced to the old Bernician Angles, whilst the shattered remnants of the Gaelic proprietary sheltered themselves amidst the Highlands and in Galloway! The whole theory is mythical. Such a measure would have raised all Scotia to the Forth, all Lothian to the Tweed, in one general blaze of insurrection. The

extend this remark considerably farther back—at least five centuries, probably six. When Abercorn, Cunningham, and the diocese of Whithern were in the possession of the Angles in the time of Beda, and when they added Kyle to their dominions soon after his death, their language must have been spoken over a far wider extent of country. The diocese of Whithern fell into other hands at the opening of the ninth century; Strath Clyde was gradually absorbed amongst the dominions of the Scottish kings; and the Anglian population either receded or remained in a subordinate position attached to the soil. Nothing of this sort, however, happened in the eastern districts of southern Scotland, and I should imagine that the dialect of the Bernician Angles, which subsequently became the basis of Lowland Scotch, continued to be spoken uninterruptedly in this quarter from the close of the sixth, or the opening of the seventh centuries. The charters show that, in this quarter, the agricultural population attached to the soil bore Teutonic names; whilst towards the west and beyond the Forth, they were generally Celtic. This is always a sign of lengthened occupation.

earls were never "pushed out," and if the remaining proprietary were dispossessed, where would have been the use of legislating for thanes and ogtierns in the reign of Alexander II.? What fees could the Earls of Fife have shared with the king, if there had been no proprietary in the earldom holding by the ancient tenure? If they had not been dispossessed in the thirteenth century, wnen did the displacement begin? The demesne lands of the crown were wide enough to admit of many an acre being granted away without dispossessing a single well-affected subject either in *Scotia* or the Lothians. Wide baronies were made over to the great Norman feudatories, in which, as in Renfrew, the *probi homines* remained undisturbed; and the true result of the measures of David and his successors was to feudalize the settled portion of the kingdom, not to convert it into a desert by the extermination or displacement of the original proprietary.*

* I may be permitted, perhaps, to take this opportunity of noticing the interesting fragments from the Book of Deir which have just been published in the *Antiq. of Aberdeen and Banff* (*Spalding Club*), vol. 4, pp. 544-50. The list of grants and charters preserved in Gaelic evidently represents those *Memoranda* to which I have elsewhere alluded (vol. 1, p. 249-50), resembling similar lists in the Register of the Priory of St. Andrews, and in the Books of Kells and Llandaff. The divided, or double, authority so observable amongst the Celts, is very evident in the joint grants of so many Mormaors and Toshachs; whilst the subordinate position in which the *Brehon* is found, corroborates the difference existing between the Gaelic and Cymric principles of government. Matadin "the *Brethim*" appears indeed, but only amongst the witnesses to a grant; and it is the Mormaor, or royal deputy exercising the prerogatives of the "head of the race," supposed to be vested in the sovereign, and the Toshach, the captain or military leader, who stand forward as the joint officials of the earldom. Pet-mic-Gobraig, given to the abbey by Malcolm II., is again given by Earl Gartnay in the reign of David, thus apparently confirming the supposition that the grant of land in perpetuity, or rather, strictly speaking, the alienation of land in perpetuity, was unacknowledged in the early Gaelic kingdom. A gift to the family monastery was by no means an alienation in perpetuity; for it was simply a portion of the clan-lands set apart to be held by certain members of the family by ecclesiastical tenure—the head of the race frequently re-annexing such property to his own possessions for a time by assuming the office of abbot. It may be a question, also, whether some of the earlier grants do not represent a gift of rights or dues claimed from the land, like the tithes of a later period, rather than the land itself; and in the grant of Bidben the respective "shares" of the King, the Mormaor, and the Toshach, are clearly traceable. Wherever the word is used of which the literal meaning is "drowned," and

which is rendered "mortified" or "sacrificed," it will be found that the grant is made in return for "receiving the whole;" meaning, perhaps, that in return for the land, or for some similar advantages, the "mortifier" guaranteed all the dues and offerings belonging to the abbey—just as the Bishops of St. Andrews guaranteed food and clothing to the Community of Kirkinnes, in return for the lands of the little priory. Some of the later grants are given "till the day of judgment;" the blessings or anathemas invoked upon all who respected, or neglected, the pious wishes of the donors seeming to tell of a period of transition, when the grant in perpetuity was scarcely recognized by all as irrevocable. Earl Gartnay's gift of Pet-mic-gobraig is "bound to Dunkeld," pointing both to the absence of any regular diocese in this quarter in the eighth year of David's reign, and to the apparent power of the donor to place his grant under the jurisdiction of any bishop he chose to name—a power which may partly account for some of the "outlying" churches connected particularly with the diocese of Dunkeld. Dunkeld, it must be recollected, had long been the leading Scottish monastery under the patronage of Columba, and the earl's choice on this occasion may have been dictated partly from the traditionary veneration of the Northern Picts for the saint in question, and partly from the connection of St. Drostan, the patron saint of Deir, with Columba. The Book of Deir is equally valuable for the light which it throws upon the early history of that part of Scotland. In the liberal donations of Malcolm II. to the little abbey, coupled with his traditionary dedication of Mortlach, we may see a confirmation of the successful northern wars of that king, which seem to have first annexed to *Scotia* the district between the Dee and the Spey; whilst the grants of Malcolm Mac Malbride, and of Lulach's son Malsnechtan, would appear to mark the tenacity with which the family of Moray clung to their claim of exercising proprietary rights in that province, in which both the kings who sprung from their race met their death. In Muredach Mac Morgan, who alone seems to have united in his own person the offices of Mormaor and Toshach, may probably be seen either a trusted adherent of King Malcolm, and military leader of Buchan, advanced to the dignity of Mormaor; or the first petty Oirrigh of the district, who, like one of Harfager's Jarls, exchanged a precarious independence for the wealthier and surer position of a royal deputy. His race, or rather that of his father Morgan, undoubtedly supplied the Mormaors of Buchan, and probably the Toshachs, until the earldom seems to have passed by Earl Gartnay's daughter Eva to her husband Colbain, when, in a great "mortification," Duncan Mac Sitric Toshach of *the Clan Morgan* appears in connection with the grant of the earl and his wife. So when the earldom of Carrick passed by the Countess Marjory to the family of Bruce, her father Earl Nigel confirmed the right of the heir-male, Roland de Carrick, the ancestor of the Kennedys, to the headship of the family under the earls; and in Duncan we surely see the heir-male of the race of Morgan advanced to a similar position, when the earldom passed from the old family by an heiress. The care with which the Countess Eva is called *a-ben-phusta*—the *wedded wife* of the Earl—on the same occasion, arose, probably, from the numerous *hand-fast* connections prevalent at this period. The younger Thomas de Galloway, Ronald I. of Man, Roderic de Insulis, perhaps also Donald Mac William, all sprung from unions of this description; and probably also the sons of Earl Fergus and half-brothers of the Countess Marjory, who subsequently carried the earl-

dom of Buchan to the Comyns. For the rest, the Book of Deir completes the identification of the six earls who witnessed the Foundation Charter of Scone, connecting Gartnay with Buchan and Rory with Mar (vol. I, p. 184), and supplies a Gaelic word for "probi homines"—*maith*, the *good* men, or proprietary. As an excuse for introducing this subject into the present Appendix, I may add that Cormac, *Abbot* of Turreff, appears in David's charter as Cormac *de* Turreff—another instance of the erroneous character of Chalmers' theory; whilst the prominent position, and the proprietary rights of the Clan Morgan and the Clan Canan at the close of David's reign, forbid the supposition that that popular sovereign encroached upon the pre-existing rights of the native proprietary of *Scotia*. The race of Morgan, and other families of similar origin, formed the strength of the earldom under the Comyns, losing the recollection of their earlier names as the progress of feudal tenure changed them into knights and squires and men-at-arms, known from their property instead of from their descent; and gradually forgetting, in the same manner, the language of their early ancestry in the speech which has long since spread over the whole of Scotland. The dialect and the tenure of ancient *Scotia* may have been "pushed out," but surely not the men.

Appendix S.

THE SEVEN EARLS.

"There existed in the ancient kingdom of Scotland a known and established constitutional body denominated *the Seven Earls of Scotland,* possessing privileges of singular importance as a distinct Estate of the Realm, severed equally from the other Earls and from the body of the Baronage." Such was the theory of Sir Francis Palgrave, in which he was followed by other authorities. It was controverted in an able article in the Edinburgh Review, in which the writer clearly disproved the existence of any such institution; but in his supposed solution of the mystery by identifying the Seven Earls with the actual partizans of Bruce, who counted exactly that number of earls amongst his supporters, I cannot agree. Bruce, or his advocate, distinctly asserts the intervention of *les Seet Countes de Escoce* when "il i avoit guerre entre le Roi de Engleterre et le Roi Davi. E en cel tens que Northumberlaund fut perdu, il i avoit pees fust fait entre le Rei d'Engleterre e le Rei d'Escoce, tele . . . que *les Seet Countes d'Escoce* feussent tenuz de serment," etc. Without discussing the historical truth of this assertion, which is more than problematical, it is sufficient to remark that it does away with the supposed solution of the mystery. The Seven Earls who supported Bruce could not have been the Seven Earls who were bound on oath "when Northumberland was lost," or in the time of

"king Davi;" and the advocate who made this statement, or the appeal in behalf of "the Rights and Privileges of the Seven Earls," could scarcely have merely meant the seven partizans of Bruce.*

The two principal claimants in the competition for the crown of Scotland pursued distinct and different lines of argument. Balliol, unquestionably the rightful heir by the feudal law of succession, had simply to prove his pedigree and appeal to the usual custom of the age. Bruce, on the other hand, brought forward every imaginable plea, on the principle of trying every chance. He maintained that by the ancient custom of Scotland *the nearest of blood* succeeded, a brother before a son for instance—and here he was undoubtedly correct up to a certain point—he being a degree nearer to the royal stock than Balliol. Arguing like the Earl of Dunbar in the reign of William the Lion, he asserted that Alexander II. had declared him his successor in default of children, as *nearest male heir* to the crown; and then, after setting forth these and other pleas, in which he maintains the *indivisibility* of the kingdom, he ends by adopting the argument of John de Hastings, assuming that it was *divisible* like the Honor of Huntingdon, and putting in a claim to a third part of it. It is clear, therefore, that the arguments of Bruce must not be regarded in the light of absolute historical facts, but as legal pleas—I believe I am justified in assuming that these are not necessarily convertible terms. From not keeping this in mind Sir Francis Palgrave seems to have been led into the very error into which it was the object of Bruce's argument to inveigle Edward. The opinion of the age, however, was against the existence of any such institution, the plea was disallowed, and after the accession of the claimant's grandson to the throne, the Seven Earls are never again alluded to. In the great Council of the Scottish clergy, held on the 24th of February 1309 in the Church of the Friars Minorite at Dundee, when the title of the king to his

* *Doc. etc., Illust. Hist. Scot., Introd.*, p. xxi. *et seq.* Nos. iv., v. *Ed. Rev.* v., lxvi., No. 135, *Art.* 2.

throne was unanimously confirmed, not one word is mentioned about any appeal to the Seven Earls.*

It is evident, however, from the tract *de situ Albaniæ*, written in the course of the twelfth century, that there was still at that period a tradition about the Seven Provinces of the Picts, whose rulers may at some remote period have exercised the prerogative of choosing the *Ardrigh*. The theory of election remained in force long after in practice it had virtually ceased, and it is clearly traceable in the old law of Tanistry which was current in Ireland as late as the seventeenth century; though it was evidently as much a form at that period as in the German empire of the same era. As a form it may have long lingered in Scotland, but if any privileges belonging to the ancient provincial *Oirrighs* had really existed in the thirteenth century, they would have extended to *all the Earls*, representatives in a certain sense of the earlier princes and Mormaors. There is good reason for supposing that in the great assemblages at the coronation of the Scottish sovereign, the Community or Estates of the Realm chose their king *in form*, or rather, accepted the sovereign presented to them by the leading magnates—in earlier times perhaps by the rulers of the Seven Provinces—but there is not a trace in the historical age of any seven leading noblemen assuming the privilege of nominating the king.

The Seven Earls, however, do not make their first appearance at the time of the contest for the crown after the death of the Maid of Norway. In 1250, when the body of Queen Margaret was removed into the choir of Dunfermlyn, the ceremony is said to have been undertaken in the presence of "Septem Episcoporum et Septem Comitum Scotiæ."† In the following year, Durward, who had been accused of removing the confidential counsellors of the late king from about the person of his childish heir, was further charged with a plot to obtain the legitimation of his wife, a natural daughter of Alexander II. Robert Abbot of Dunfermlyn, the Chancellor, was at the same

* *Act. Parl. Scot.*, vol. 1, p. 100. *Act. Parl. Rob. I. ad an.* 1309.
† *Reg. Dunf.*, No. 348.

time accused of a design to further this project by a fraudulent use of the great seal, which was accordingly not made over to the succeeding chancellor Gamelin, but broken up in the presence of the assembled nobles. The connection between this earliest appearance of the Seven Earls and the plot of Durward is not a little singular, considering that the "mystic number" next appears in the train of the elder Bruce, one of Durward's principal supporters. If there was any truth in the charge brought against Durward, after he had obtained the legitimation of his wife, his next step would have been to obtain the confirmation of his daughter's claim. The consent of all the bishops, abbots, earls, and barons—of the Estates of the Realm—he never would have gained; but the difficulty might have been overcome by the nominal revival, or in reality the creation, of a Court of Seven Earls (his partizans) inheritors of the prerogatives of the mysterious seven earls of Angus MacFergus, or of the seven provincial kings of the Picts.

Appendix T.

THE LAWS OF KING HENRY THE FIRST.

The Laws of King Henry the First, the same laws which Prince Henry of Scotland promised to retain throughout his earldom of Northumberland, and which lay, probably, at the root of most of the innovations of David, are sometimes supposed to have represented in principle the Anglo-Saxon institutions of the age preceding the Norman Conquest; institutions which, according to the same theory, were withheld during the reigns of the early Norman kings, promised rather than granted by Henry, and finally re-established by Magna Charta. In such a view, however, I can scarcely coincide; for the laws of King Henry contained much besides a mere confirmation of the laws of the Confessor.

Edgar completed and consolidated the system of his immediate predecessors, leaving his Danish subjects to the enjoyment of their own laws, and requiring from them little more than the acknowledgment of *hlaford-socn* and the Hundred. After the subversion of the Saxon dynasty, Danes and Saxons agreed to "the Laws of Edgar" at Oxford in 1018, each people retaining their peculiar customs under the Danish sovereigns, though Canute seems to have introduced a few alterations, relating principally to some of the prerogatives of the crown. There is not the slightest allusion to any enactments of the Confessor, who is merely said to have dismissed "the Litsmen," and repealed the obnoxious Danegeld, after he had been ten years upon the throne; and to have guaranteed "the Laws of Canute" to the Anglo-Danes, when

they chose Morkar to be their Earl in the last year of Edward's reign. The Conqueror confirmed "the Laws of my kinsman King Edward," introducing, like Canute, a few alterations; and "the Law of King Edward, with the amendments which my father added by the advice of his barons," was again confirmed by Henry the First upon the occasion of his coronation. There is not the slightest historical evidence to show that either the Anglo-Danish or Anglo-Norman princes introduced, or attempted to introduce, any novel code into England, or interfered in any way, either with "the ancient custom of the realm," or with the ordinary administration of justice.*

Towards the middle of the twelfth century the Civil Law was brought into England by the clergy, apparently in consequence of the dispute between Henry of Blois, Bishop of Winchester, and Theobald, Archbishop of Canterbury, about the office of Legate *a latere;* "and thus," exclaims Gervase of Canterbury, "were Laws and Lawyers first called into England, Master Vacarius being the earliest teacher of the Law at Oxford."† The novel code was opposed both by Stephen and his successor, and was

* *Chron. Sax.* 1018, 1052, 1065. *Leg. W. C. Leg. Hen. I. Hoveden ad an.* 1180. *Dial. de Scac.*, l. 1, c. 16. The laws of Edgar are said by the compiler, or rather by one of the compilers, of the *Leg. Confess.*, to have been in abeyance for sixty-eight years, from the death of Edgar to the accession of Edward. The assertion is certainly not borne out by the Chronicle, or by the "Laws of Canute;" and another compiler has closed his collection, more correctly, with the remark "these are the laws, etc. . . . . *confirmed by Canute*" . . . .

† *Twysden*, p. 1665. The English laity appear to have been somewhat backward in appreciating the advantages about which Gervase so glowingly dilates; but that, amongst all who put in a claim to education and refinement, it was usual, at this time, to regard "ancient custom" as a relic of barbarism, may be gathered from the apology for the "lex non scripta," put forward by Glanville in his Prologue, "Leges namque Anglicanas, licet non scriptas, Leges appellari non videtur absurdum (cum hoc ipsum lex sit, 'quod principi placet legis habet vigorem') eas scilicet," adds the Justiciary deprecatingly, "quas super dubiis in consilio definiendis, procerum quidem consilio, et principis accedente auctoritate, constat esse promulgatas." This is evidently addressed to the class who would have said, with Gervase, "tunc leges in Angliam *primo* vocati sunt." From Glanville's allusion to the arbitrary doctrine of the *Institutes* (l. 1, t. 2, sec. 6), it is evident that the danger threatening "ancient custom" and "the liberty of the subject" was not from *Normandy*, but from *Rome*.

closely connected with that struggle between Henry and his archbishop, Beckett (who appears to have been mainly instrumental in originally introducing the Civil Law), which has recently been so ably delineated by the Dean of Chichester in his "Lives of the Archbishops of Canterbury." Henry insisted upon the recognition of "the laws of his grandfather," and the course which he pursued is well worthy of notice. It is thus described by Hoveden: "tunc præcepit rex universis comitibus et baronibus regni, *ut irent foras*, et recordarentur legum Henrici avi sui, *et eas in scripto redigerent*." Of these *unwritten* laws, therefore, upon which Henry evidently grounded his "prerogative," and which were to be sought for *foras—without*, or throughout the country—the depositaries and expounders could only have been the *judices regis*, or freeholders of the realm; the very same class which is said, in Saxon England, to have besought the Conqueror not to assimilate their "ancient custom" with the usages of the Danelage, "quia durum erat eis suscipere leges, et *judicare de eis quas nesciebant*:" and as long as the freeholders of the realm were the sole depositaries of the law, and expounders of "ancient custom," it is difficult to conceive how such law, or custom, however it may have been neglected, could have been materially altered without their consent. The earliest results of the royal inquiries were "the Constitutions of Clarendon," subsequently confirmed at Northampton; and we probably owe to some period of the contest between "ancient custom" and the Civil Law, the compilations known as "the Laws of the Confessor," "the Laws of the Conqueror," and "the Laws of Henry the First," together with the earliest treatise upon the Common Law of England, the work of Ranulph de Glanville.*

* *Leg. Conf.* xxxiv. *Leg. Hen. I.* xxix. *Hoveden* 1164, 1180. Under the latter date he writes thus: "eodem anno Henricus . . constituit Ranulfum de Glanvilla summum justiciarium totius Angliæ; *cujus sapientia conditæ sunt leges subscriptæ quas Anglicanas vocamus*." These "leges subscriptæ" are the compilations known as the Laws of the Confessor and of the Conqueror; though additions by some subsequent hand, or hands, have been made to them, for neither Glanville nor Hoveden seem to have been aware

The administration of "good law," however, is by no means incompatible with the existence of arbitrary and unlimited "prerogative;" and the combination is nowhere more evident than during the reign of the Conqueror, of whom a contemporary Saxon chronicler has left a faithful portrait which can scarcely be accused of partiality. "The king and his headmen loved much, and over much, covetousness in gold and in silver, and recked not how sinfully it might be got, provided it came to them . . . he recked not how sinfully the reeves got it from poor men, nor how many illegalities they did; *but the more that was said about right law, the more illegalities were done.* . . . Amongst other things, however, is not to be forgotten *the good peace that he made in this land;* so that a man who had any confidence in himself might go over his realm, with his bosom full of gold, unhurt. Nor durst any man slay another man, had he done ever so great evil to the other." Rufus "was ever tormenting this nation *with an army and with unjust exactions;*" but Henry, to gain the support of the great body of the freeholders, "promised to God and all the people to put down all the injustices that were in his brother's time, and to maintain *the best laws that stood in any king's days* before him."* The charter which he gave on the occasion

that William legislated for "the Picts and Scots of Albany, and the Islesmen." As Hoveden makes no allusion to the *Leg. Hen. I.*, they were probably compiled a little later, in the troublous times preceding Magna Charta; and they may be supposed to represent up to a certain point "the custom of the realm" about that period.

* *Chron. Sax.* 1087, 1100. A somewhat different account of this period will be found in the pages of a writer, for whose authority I have far too high a respect to permit me to question the accuracy of his description, without giving my reasons for doing so. He has grounded his account on the "life of Abbot Frederic" in the *Vit. Ab. St. Alb.*, p. 46, attributed to Mat. Paris. Frederic was Abbot of St. Albans at the time of the Conquest, when "the English nobles, who had spurned the yoke of servitude from the days of Brute, and who, like the ancient Trojans, wore their hair and beards long, were forced to shave their chins and clip their locks!" The writer was evidently familiar with Geoffrey of Monmouth, and must have lived long after the times he is describing. After the return of Lanfranc from Rome, or not earlier than 1071, William, armed with the double sword of Church and State, began ravaging the country in every direction, on which the English, hailing Edgar Atheling as their king, gather under—*Abbot Frederic*, "inter Anglos dux et promotor effi-

of his coronation, and which may be regarded as the foundation of Magna Charta—just as his confirmatory charter to the citizens of London may be looked upon, probably, as the basis of all subsequent burghal law in England—established "the liberties of the church;" fixed a "reasonable" amount for relief and "amercement;" regulated the law of wardship and "maritage;" abolished *mercheta*, apparently, to a certain extent; promised the repeal, or a modification of the law relating to *murdrum*; and, above all, guaranteed to all tenants in "fief de hauberk," complete freedom for their demesne lands from all the payments and "work" to which they had hitherto been liable—"militibus, qui *per loricas* terras suas deserviunt, terras dominicarum carucarum quietas *ab omnibus gildis, et ab omni opere, dono meo concedo;* et sicut *tam magno gravamine allevati sunt,* ita equis et armis bene instruant," etc. Separately and distinctly from all these guarantees, he confirmed "the law of King Edward, with the amendments added by my father with the advice of his barons." It may be gathered, then, that before this time land held by military tenure was liable to "*gilda et opera;*" a heavy burden from which it was relieved, not

cacissimus." The terror-stricken king, by the advice of Lanfranc, speaks fairly to the English, who "regimine et ducatu abbatis Fretherici" meet him at Berkhampstead, where the abbot, not the archbishop, administering the oath, William swears to observe "the good old laws," etc. He soon breaks his oath, the Atheling retires to Scotland, and Abbot Frederic takes refuge amongst the marshes of Ely; "but he *did not* carry off with him the relics of St. Alban, as those shameless monks of Ely assert, thereby diminishing the reverence due to St. Alban and other good native saints of the realm (*sanctos regni*), like St. Edmund, and St. Cuthbert, whereby fewer miracles than of old are wrought in their churches." Such is a specimen of the history, and the style, of Matthew Paris, or the writer of these lives. The meeting at Berkhampstead took place in 1066, *immediately after Hastings*, Lanfranc was not present at it, and the leader of the Anglo-Saxons was the Archbishop of York, who subsequently crowned William—it is surprising that Abbot Frederic was not promoted to this office also by his biographer. The companion of Hereward in the Ely marshes was the Bishop of Durham. The whole history of the period has been mangled, and "put out of joint," for the glorification of St. Albans and its abbot, who usurps the place of both bishop and archbishop. Such an authority I cannot place before the Chronicle, Florence, and Simeon. The lack of miracles seems to have stimulated the monks of St. Albans to fabricate history in the place of their earlier—productions.

by the revival of the laws of King Edward, but by a royal concession from Henry the First.*

The early *Allod* was free from every engagement except military service, and it is probable that the *Læn* was also, originally, only liable to a similar obligation, for there is no allusion to the feudal aid in the law of the Benefice; and it is difficult to avoid connecting the ordinary *three* aids of the feudal tenure with the increasing prevalence of "Roman Law," when it is recollected that upon *three* occasions the Roman client was bound to assist his patron.† It was some time, however, before

* *Leg. Hen. I.*, i. ii. He waived all right of demanding money for granting license to marry; "neque ego aliquid . . . pro hac licentia accipiam." This was, at any rate, the principle of the *merchet*a. According to the Conqueror's law, every unknown man found murdered was to be reckoned as a Norman, unless proved English, and the highest fine levied on the district if the murderer was not given up within a year and a day. The modification of the law by Henry seems to have abolished the distinction of race, thus returning to the earlier principle; for when the *Dial. de Scac* was written, every death of this description was reckoned as *murdrum* unless the dead man was proved "a Villein"—the district paid for him as *Twelfhynd* if they could not prove him *Twyhynd*. This was founded on the principle that every *stranger* was peculiarly protected, and valued at the highest rate. Copies of Henry's charter were, says Wendover, sent to all the counties, and it was probably in confirmation of it that the following was issued—apparently after the great council held in 1108, for it was witnessed by Richard, bishop of London, who did not hold the see before that year. "Sciatis quod concedo et precipio, ut amodo comitatus mei et hundreda in illis locis et eisdem terminis sedeant, sicut sederunt in tempore Regis Edwardi, et non aliter" (*Fœd.*, vol. 1, pt. 1, p. 12). In fact, the regulation of the Hundred and County Courts, the abolition of distinction between the races, and a return to the old system of assessment, formed the main features in the revival of "King Edward's Law." A comparison between Glanville and the Grand Coutumiere will show that, though the feudal law of the kingdom and the duchy were in many respects identical, the latter ignored the English regulations of the Hundred and the Shire. Hence the *cri de Haro*—the *sequela clamoris vicinia*, or "Hue and cry"—went, as in Scotland, from barony to barony ("La justice aux barons de Normandie." *Gr. Cout.*, p. clxiv.), as was the case in Saxon England under Athelstan. William confirmed the institutions which dated from the reign of Edgar, but as long as the races remained distinct, the Norman Vavassors, probably, lived by Norman law, and neglected "the law of King Edward."

† "Erat autem hæc inter utrosque officiorum vicissitudo—ut clientes ad collocandas senatorum filias de suo conferrent; in aeris alieni dissolutionem gratuitam pecuniam erogarent; et ab hostibus in bello captos redimerent." *P. Manutius de Sen. Rom.* c. 1, quoted in *Blackstone* (*Kerr*), vol. 2, p. 63, note. The second seems partially

these aids, which were always supposed, in theory, to be voluntary, were legalized as settled, or involuntary payments, and it would be difficult to name the exact time when they became obligatory in England. The three "aides-chevels"—so called from being paid to the *chef* or overlord—were acknowledged as settled legal payments in Magna Charta, but, besides the aid-relief, Glanville only mentions *two*, omitting all notice of that for ransoming the overlord; and it may have been for this reason that the money levied for the ransom of Richard I. upon land held by knight-service, was invariably entered as "*scutage*," all who were on service with the king in Normandy being exempt from paying it.* Beyond the three "aides-chevels," which seem to have been at length acquiesced in wherever the feudal tenure of knight-service was in force, the "fief de hauberk" was absolutely free from all "work or *gyld*."

Such was not the case with Anglo-Saxon *Thegn-land*. To *burh-bote* and *brigc-geweorc*, which seem to have been imposed at a very early period *edicto regis*, or by an exercise of prerogative, it was liable, as well as to the original *fyrd-fare*, to which *scyp-fyrd* appears to have been subsequently added; whilst "from many lands more land-right arises to the king's ban. Deorhege, sceorp to frith-ship, sea-ward, head-ward, fyrd-ward, alms-fee, kirk-shot, *and many other different things*." Danegeld was another impost, dating from the reign of Ethelred, which was levied originally, and subsequently done away with, simply by an exercise of prerogative, and "was always paid before *other gylds*, which were variously paid, and with which *people were manifoldly distressed*." Thegn-land, in short,

traceable in the French aid "a son fie racheter;" and in England leave was occasionally given by the sovereign to levy an aid "to pay the lord's debts." *Vide Madox Hist. Exchcq.*, vol. 1, p. 617. It would appear that, upon the introduction of the Roman principle, the freeholders must have declined assenting to a privilege which would have permitted the overlord to tax them at will. The aid to knight the eldest son was probably a compromise.

* *Glanville*, l. 9, c. 8. *Madox*, vol. 1, p. 590. Scutage was the Norman "ayde de l'oste," which could not be demanded from those who gave "service de l'oste." *Gr. Cout.*, c. 44. The same principle is asserted in Magna Charta.

was liable to Hydage, or Tallage, and "tailles sont levées par cas de necessité, *et de volonté de Prince* . . . . aydes nul ne puet lever, si ce n'est û cas pour quoy elles sont deuës"—a difference of vital importance in such an age—and, accordingly, long after the Conquest, the *Thegns* and Drengs of Northumberland, and the Drengs, *Thegns*, and Villeins of the bishopric of Durham, continued to be tallaged. It may have been for this reason that the "men" of the Archbishop of Canterbury, holding in gavelkind, obtained permission to change their tenure for that of knight-service in the reign of king John.*

There was nothing in the earlier codes before the Conquest which would have relieved Thegn-land from the obligations with which it had gradually become burdened, simply by a return to "the Laws of the Confessor;" nor was there any class amongst the Anglo-Saxons powerful enough to restrain the prerogative by which these burdens must have, originally, been imposed. The great body of the Ceorlcundmen were upon a footing but little removed above absolute serfdom. As early as the close

* *Rect. Sing. Pers. Chron. Sax.* 1052. *Ducange in voc. Tallia. Madox*, vol. 1, p. 698, 717. Danegeld, according to the *Dial. de Scac.*, l. 1, c. 11, ceased to be an annual payment after the Conquest—more correctly, from 1052—and was only levied on a few great occasions. The name occurs, however, as late as 20 *Hen. II.*, when Osbert de Brai was fined for forbidding the payment of Danegeld from the king's demesnes, *Madox*, p. 692. It was, probably, the name by which all unwelcome imposts of this description were long known to the Anglo-Saxons, until it melted into "tallage;" and after its disappearance from official documents, Drengs, Thegns, and Villeins, when they were *tallaged*, may have still grumbled at the obnoxious *Danegeld*. It was the name given in an old French chronicle to the aid levied in 1114 to marry Matilda to the emperor; "a cel tems fu done Danegeld parmi Engleterre." *Madox*, p. 685. The early Saxon "knight," probably, looked upon the aid he paid from his "fie-de-hauberk" as a Danegeld. After the archbishop's Gavellers were converted into tenants in knight's fee, they compounded *in denariis* for the *xenia*, *averagia*, *et opera*, due from their former tenure. Subsequently they seem to have reverted to their original tenure, for "in 18 *Hen. VI.* there were not forty persons who had lands of the yearly value of 20 lbs. who did not hold in Gavelkind." *Lambarde* (*edit.* 1596), p. 532, 546. The reason may have been that, after the admission of the principle of regulated taxation, the settled payments, which had originally been compounded for as safeguards *against* taxation, became grievous burdens as *additions* to taxation.

of the seventh century it was sufficient for a wounded Gesithcundman to describe himself as a *folklice* man to be reckoned at once as a non-combatant, and exempt from the obligations of the blood-feud. Two hundred years later "the Ceorl upon Gafol-land" was reckoned upon a footing with the serf who, by following the Northmen across the sea, had risen to be a Leysing or Freedman. Sixty years before the Conquest, when "the king commanded *all the people* of Wessex and Mercia to be called out . . . . the *Here* went as it would, and the *Fyrding* (*all the people*) did every harm to the *Land-leode*."* The Land-leode—Geneats, Geburs, Cotsetlas, and others—had no military duties to perform, and it may be safely asserted that, for at least four centuries before the Norman Conquest, the Ceorl was never a soldier except as a thegn or less-thegn, a military follower in the *Hird* of a king or nobleman. In such an age a class neither armed, nor accustomed to arms, could scarcely have retained the reality, even if in a few respects it had preserved the semblance, of freedom; and it is useless to look for the equivalent of the Northern Bonder amongst the Saxon Ceorls.

In a state of society in which the sole *Æthelings* had, for centuries, been the reigning family, it is equally difficult to imagine how "prerogative" could have been restrained by a class to which the Hlaford's will was absolute law. The king and his Witan had been irresponsible for ages; and as the Witan was not a popular, but a highly aristocratic, assembly, and mainly composed of bishops and ealdormen, all of whom were appointed by the crown, it may be doubted how such a body could have acted as a "constitutional" check upon any prince whose actions were dictated by ordinary sagacity and resolution. Like all the institutions of the North, those of Saxon England arose out of a state of society which had passed away many years before the Conquest; and in which, as long as a king and his people, or his thegns, dwelt amidst a subject population, there was no need of

* *Chron Sax.* 1006. *Bed. Ecc. Hist.*, l. 4, c. 22. *Alf. et Guth.*

any check upon a prerogative which was only exercised, and then without limit, at the expense of the dependant classes. But in another stage of society exaction gradually extended to the privileged order, beginning, of course, with the lesser "freeholders;" and there was nothing in the institutions of the earlier period to prevent the encroachments of a prerogative which must have been immensely increased by the general extension of "Commendation." Bocland, which seems to have been principally confined to a few of the higher nobility, was probably defended by its *boc*, or charter, from all liabilities beyond the "trinoda necessitas;" but it was quite within the power of the sovereign to increase the burdens, which were gradually imposed upon the *Læns* which he distributed amongst his thegns, until the "many other different things," already alluded to, were added to "many lands" held by military tenure. The heavy tributes paid to the Danes, and the regular Danegeld levied before all other *gylds*—for the support, originally, of "Torquil" and his hired sailors—familiarized the Anglo-Saxons with the principle of "tallage;" fatally accustomed them to a state of society in which "there was not a chief man who would gather a force, but each fled as he best might;"* and permanently alienated from the race of Cerdic the affections of their native subjects. Saxon England breathed in peace under the firm rule of Canute; and upon his death, Godwin, the impersonification of Anglo-Saxondom, held to the offspring of the mighty Dane, and set his face against the race of Alfred. Edward purchased his support by distributing the whole of the south and west amongst his sons, and by raising his daughter to share the throne—how far the marriage was really to his liking may be gathered from his subsequent conduct to the lady—but in his quarrel with Godwin, the whole of Saxon England rallied round the earl, whilst the king threw himself upon the support of the northern magnates. Civil war was averted by the sacrifice of the royal favourites; but the elements for intestine strife were not

* *Chron. Sax.* 1010.

wanting, for in the year before the Conquest, when "the Northern men" rejected Tosti for their earl, and crossed the frontiers of the Danelage to claim the confirmation of Morkar, they "took all the cattle that they could come at, that was many thousand, and *many hundred men they took* and led north with them." South of Watling Street they harried the country like an enemy's land; and yet these were the Anglo-Danes still claiming to live by "the Law of Canute," who are supposed, in some inexplicable manner, to "have blended with the Anglo-Saxons" in the days of Alfred!*

William invaded a disunited country. The Saxons clung to Harold, and fought for him at Hastings; they never rose for Edgar Atheling. It was a northern archbishop, and the northern earls, who, with the Londoners, stood by the feeble prince who was known in after times —scarcely amongst his contemporaries—as "England's darling." A northern bishop, and a few northern lords, held out with the northern Hereward, for a short time, amidst the marshes of Ely; and when all hope was over, some of the survivors of these northern lords found an asylum, with the Atheling's sister, beyond the Tweed. Five years sufficed for William to subdue the land, and to secure the neutrality of Scotland by an exhibition of overwhelming force and—a subsidy. Beyond the northern capital (York) he established a desert as a frontier, and years elapsed before the districts not included in the Domesday survey were reduced to real obedience to the English crown. But within the realm which he surveyed he ruled without dispute; "there was not a hide of land within England that he knew not who had it, or what it was worth;"† and England under the sway of the Norman Conqueror exhibited the unwonted spectacle of "good peace," with the but too familiar addition of excessive

* *Chron. Sax.* 1051, 1065. The usual reasons assigned for Edward's estrangement from his wife scarcely account for his conduct in depriving her of all her property on his quarrel with her family. Saintly motives surely did not dictate such a course of proceeding.

† *Chron. Sax.* 1087.

taxation. No new tenure was necessary to justify exactions which were already far from novel. When William granted to Battle Abbey a league of land around it, he endowed his grant with *sac* and *soc, toll* and *team*, and many another privilege expressed in Latinized Anglo-Saxon phraseology; whilst he freed it from *gyld* and *scot, hydage* and *Danegeld, brige-geweorc* and *burh-bote, deorhege* and the *fyrd*.* Privileges and burdens were alike familiar to the Anglo-Saxons; and where is the novel tenure imposed by the Conquror? William found a tenure which was but too well adapted to his favourite vice of covetousness, and he "tallaged" his people without mercy. He seems to have claimed all the privileges of a Scandinavian king, and made the heirs of his knights and barons redeem their land at its full value—he assumed that it had reverted to the crown. This was scarcely "feudal tenure;" it was unlimited prerogative; and the earliest barrier against the excessive power of the crown will be found, not in "the law of Edward" but in the charter of king Henry the first. Then first the "fief-de-hauberk"—the Norman feud—seems to have replaced in England the tenure of an earlier time.†

* "Ab omni geldo, et scoto, et hidagiis, et denegeldis, et opere pontium, et castellorum, et parcorum, et clausuris, et exercitu, et omnibus auxiliis," are the words of the grant. *Fœd.*, vol. 1, pt. 1, p. 4.

† There was a period when the military fief, or Benefice, was at most a life-grant; there was another when the military fief, or Feud, was a property, under certain conditions, inalienable. Many generations elapsed between these two periods, during which the law of succession was gradually advancing towards its later phase, though still very unsettled. From a charter already quoted (*Ap. N*, p. 454, note) it may be gathered that by the close of the twelfth century the hereditary feud was "the custom of France;" but the very wording of the charter, the very fact of "the custom" being thus carefully defined, presupposes a period, not so very distant, when such custom might have been disputed. A very slight acquaintance with Scottish charters of the same century will familiarize the inquirer into such matters with the practice of a sovereign confirming the *hereditary* grants of his predecessors—a work of supererogation, apparently, until it is recollected that there was a time when a king *could not* grant away the land except for life, and when a sovereign was in no way bound by the acts of his predecessor. The hereditary feud was an innovation in the days of David, and such confirmations may have arisen out of a natural desire to render "security doubly sure." The Normans of a generation or two before the Conquest,

The reign of Stephen was as much a period of anarchy as that of his successor was an era of "good law;" but there was very little limit to the prerogative of Henry,

when they invaded Italy, were ignorant of the hereditary feud, and William is supposed to have been struck with the similarity of the customs of the Danelage with those of his native duchy. The two leading classes in the Danelage were the *Liberales*—the king's thegns or baronage—and the *Landagende men*, or *proprietary*. Evidently the baronage was not a proprietary class at this period; and as the Anglo-Danish and the Norman customs were identical, it may be inferred that, at the date of the Conquest, no people of Scandinavian origin had as yet acknowledged the hereditary feud. The Baron and the Bonder were alone recognized amongst the Northmen. It seems generally, however, received as a historical axiom, that "the feudal system with all its burdens" was introduced into England by the Conquest. Were we at the present time to conquer a foreign country, and establish in it our laws and institutions, it might be said, with perfect correctness, that "the British Constitution" was introduced into the conquered district. Would it be equally correct to say that the British Constitution was ever introduced into England? Scarcely so, for it is a gradual development of centuries; and exactly in the same way "the feudal system," that state of society of which the last vestiges may be said to have died out in England at the Restoration, and in France at the Revolution, was also the growth of ages. Feudal *tenure* with its "burdens"—*privileges* they were once considered—only affected the freeholders by knight-service; the liabilities of the socman and the gaveller, and the obligations of the villeinage and the rest of the unprivileged classes, were neither increased nor diminished by the conversion of the benefice into the feud. Unlimited obligations had burdened the unprivileged classes ever since the time when the free German dwelt amongst a servile class which supplied his every want; and the Saxon *geneat*, before the Conquest, was bound to sow, to till, to reap, and to mow for his lord, to *feorm* him—or supply him with all the necessaries of life—to build for him, to carry for him, to ride for him when and where he willed, to keep his "deer-hedge" in order, with many another "burden," all *without a limit*. It seems difficult to conceive how Norman ingenuity could have imposed additional obligations upon a class already so thoroughly overburdened; yet is the Saxon noble, dwelling with *sac* and *soc* amongst his geneats, frequently represented as "a freeman living amongst the free;" whilst the Norman noble, with exactly similar privileges, and amidst a population similarly situated, is usually stigmatized as "a feudal tyrant!" The Conquest undoubtedly entailed a period of misery—how could it have been otherwise?—but as a *conquest*, not as a *Norman* conquest. The Norman was the youngest offspring of the free North, little affected in the eleventh century by the despotic principles of Imperial Rome—for he must not be confounded with the Frank, whom he despised as unwarlike, and who contemned him as a rude barbarian. Like his kinsman the Anglo-Dane, he had neither the written laws, the literature, nor the comparative civilization of the Anglo-Saxon, who like the Frank, however, was no longer what he had been in warlike prowess and spirit; but the institutions both of Anglo-Dane and Norman retained

whose barons were still subject to the "relief *ad misericordiam*," and were occasionally dispossessed without the

more of the impress of their original northern freedom, and the people themselves were at this period a fiercer and ruder, but a more free and energetic race. By such a people was the conquest effected, and though it unquestionably must have entailed much *individual* suffering and oppression, it would be difficult to show that it reduced any free *class* to servitude, or increased the burdens already imposed upon privileged or unprivileged tenure. The Domesday Survey is sometimes stigmatized as a badge of servitude; but though this description may be correct, the serfdom was continued, not imposed, by the Conquest; for the same document that reveals the servitude of Saxon England proves that the privileges of the Socman and the Gaveller were respected wherever they existed. The earliest step towards emancipation from servitude is traceable in *limited* exaction, when a fixed amount of labour, or of *feorm*, was substituted for the *unlimited* right of the lord in earlier times. But as society advanced in civilization and freedom, just as the fixed obligations upon knight-service, accepted by military tenants as a barrier *against* taxation, became oppressive burdens after the principle of *additional*, though voluntary, taxation was admitted—so the fixed *corvée* became a similar burden upon base tenure. These burdens, cumbering the framework of feudalism long after the spirit of the system had passed away with the times that required it, are too often represented as emanations of the system itself, introduced upon a state of society which previously ignored them; and the heriot, for instance, is described as an exaction wrung from the tenant by "feudal tyranny," though it is clearly laid down in the Anglo Saxon law, "let the lord have his own again"—on the death of such a tenant, his lord took *the whole property*. To judge any system fairly it should be estimated by the standard of the preceding, rather than of the succeeding, stage of society; and viewed in this light feudalism, like coat-armour, had its uses. Both were improvements in their day, and if they lingered in use after they became encumbrances, it was the fault of those who retained them. When Henry IV., carrying out the policy of his grandfather, conferred upon the freeholders of England the right of choosing their representatives, the constituency was based upon the feudal tenure; and at the opening of the fifteenth century, the forty-shilling freeholder and the free burgher were realities. Feudal tenure was abolished at the Restoration, at which time upwards of 160,000 lesser freeholders were dotted over the counties of England; but for 170 years afterwards the constituency still continued to be based upon a tenure that had passed away, and the consequences of this anomaly are well known. Would it be fair to charge rotten boroughs, debased "freemen," and a dwindled county constituency, upon the Plantagenets who first gave the suffrage to the freeholders of their realm? Let *real* feudalism be judged on its own merits. When the spirit has departed from either man or system the remains should be decently buried out of the way. Both may have done good service in their day, and let them be enshrined with all the honour that is their due. But should the lifeless body be retained above ground, let not the dead be blamed if the living, for their own purposes, expect a mummy to do the work of a man.

sovereign troubling himself with the legal form of "the judgment of their peers:" though Scutage was kept within reasonable bounds, for, by the statute of Westminster (9 *Hen. III.*), Scutage was to be taken "as in the time of my grandfather." Richard was as little scrupulous as his father about "disseisin;" and in the last year of his reign he seems to have almost repeated the Domesday survey. The seneschal of every baron, the lord or bailiff of every manor, the headborough and four men, whether bond or free, from every vill, with two knights of the Hundred, were summoned before the royal Commissioners in every shire, and a *tallage* of five shillings a hyde was levied over the kingdom, each hyde being reckoned at a hundred acres. The proceedings of Richard seem to have been in direct violation of the charter of his great-grandfather, but all the "illegalities" of the past were repeated and surpassed under John, until, after the great meeting at St. Albans, the barons warned his officers, as they valued life and limb, "ne à quoquam aliquid violenter extorqueant, vel alicui injuriam irrogare præsumant, aut Scotalla alicubi in regno faciant, sicut facere consueverunt." The charter of king Henry was again insisted upon, and many of its provisions were re-asserted and enlarged; but not a word was said about a return to the institutions of an earlier age, or the revision of those laws upon which Glanville had already written his famous treatise; and it will be vain to search in Magna Charta for any allusion to "the Law of King Edward."*

* *Mag. Chart. Glanv.* l. 9, c. 4. *Hoveden* 1198. *Wendover* 1213 (vol. 3, p. 262). The settled relief payable from the knight's fee in Glanville's time affords one of those indirect evidences of the manner in which burdens might be increased without any recourse to "novel tenures." The old heriot, payable in the time of Canute, from the ordinary thegn in Mercia and the Danelage was 2 *lbs.*, or a long hundred of *English* shillings; whilst in Wessex he paid his *halsfang*, or a long hundred of *Wessex* shillings. The relief from the fief-de-hauberk was evidently founded upon the old heriot payable from thegn-land; but it was a hundred *Norman* shillings, doubling the Wessex, and more than doubling the Mercian and Anglo-Danish payment. The Church was as willing as the Second Estate to fleece her flock, for in the Penitential of Egbert, where the various dues and mulcts are assessed according to the standard of Beda's age, it has been inserted that

In treating of this period of English history, the difference between the struggle of the barons against unlimited prerogative, and the contest between the two systems of law in the preceding generation, should never be lost sight of. The former was totally unconnected with any rivalry between Saxon and Norman, or indeed with *race* in any way; and was simply a stand against the undue exercise of royal prerogative, which might have been put in force by a Saxon, just as well as by a Norman, sovereign, and was, apparently, more clearly provided against by the law of the Feud, than by any of the provisions of the Anglo-Saxon code. In the latter contest the sovereign and his barons were arrayed unanimously in support of "the ancient custom of the realm," which, perhaps fortunately, was clearly in favour of "prerogative;" whilst the partizans of the Civil Law were to be found amongst that section of the clergy which, in the language of the present day, would be called "Ultramontane." The national party eventually triumphed, and the Common

"*the right shilling has always twelve pence*" (*Pœnit. Ecg.* 64, 60). The earliest step in this direction was probably taken when the Wessex scilling was raised to *five* pence. The Normans of the duchy, however, paid three times as much as the knights of England, the relief from the fief-de-hauberk being reckoned at 15 *lbs.* (*Grand. Cout.*, c. 34); which, if Lambarde is correct in estimating the Norman fief at 300 acres (p. 537), was at the rate of a shilling an acre—the actual sum paid by all portions of the fief below an eighth—and equivalent to a year's value, as in Anglo-Norman socage tenure. The relief of a barony was fixed by Magna Charta at 100 *lbs.*, and though subsequently lowered to 100 *marks*, always remained at the higher rate in the duchy. In a charter of Henry II. to Earl Ranulph of Chester (*Fœd.* vol. 1, pt. 1, p. 16) he promises 100 *lbs.* of land to each of six barons whom the earl was to choose; and coupling this with the amount of the relief established by Magna Charta and retained in the duchy, 100 *lbs.* of land would appear to have been the legal amount of a barony. The legal amount of the Anglo-Norman knight's fee in the time of Glanville was 4 hydes (feudum dimidii militis vel duas carucatas terræ, l. 2, c. 3), and the Scoto-Norman fief-de-hauberk was similarly divided into 4 ploughlands. The hyde is occasionally reckoned at 96 acres, an amount that has evidently been obtained by dividing an Anglo-Norman knight's fee of *four* "long hundreds," or 480 acres, into *five* hydes. All these measurements, however, were to a certain extent more or less arbitrary, and the knight's fee of the time of Henry I. was larger than in the days of his grandson; in other words, the same service was exacted by "the new feoffment" for less pay than under the old.

Law of England, founded upon the *Leges Anglicanæ*, first collected and commented on in the time of Glanville,—the same laws which earls and barons again declined to alter in favour of the civil code in their famous declaration "quod nolunt leges Angliæ mutare"*—may undoubtedly be regarded as the development of that "ancient custom" to which the Dane and the Norman, as well as the Saxon, contributed. But the germs of our Parliamentary system are not to be traced to the contest between Anglo-Norman Law and the Civil Code. That first arose in consequence of the successful assertion of the strictly feudal principle that none but the legal aids should be demanded without the consent of the whole Community of the realm—a principle of which the germs may be detected in the charter of Henry the First, distinct and separate from "the Law of King Edward:" and it was, above all, to the guarantees contained in this charter that the barons asserted their right when they claimed the restoration of "the Laws of King Henry the First."†

* *Stat. Mert.*, 21 *Hen. III.*, c. 9.

† I must take this opportunity of modifying an assertion which I have elsewhere made (vol. 1, p. 283, note) that the Grand Assize "was only introduced into the English law by Henry the Second, according to the highest testimony, Glanville (quoted by *Blackstone*)." Glanville's words are "est autem Magna Assiza regale quoddam beneficium, clementia principis de concilio procerum, populis indultum" (l. 2, c. 7); and I doubt whether they justify the great English lawyer in asserting as a positive fact that the Grand Assize was "instituted by King Henry II. in Parliament." The earliest modification of the wager of battle seems to have been its limitation to questions in which the property in dispute was above the value of five *solidi*. From the wording of a legal form in Glanville (l. 2, c. 3) it would appear that this rule was in force in England in the days of the great Justiciary, and it has been attributed to Henry I. on the strength of the *Leg. Hen. I.*, lix. 16; but the amount there mentioned is *ten* shillings, and as advancing civilization would have *raised* rather than *lowered* the sum, though it is not at all improbable that the modification was introduced by Henry, I think the discrepancy between Glanville and these laws is another reason, coupled with their non-appearance in Hoveden, for placing them after the era of Henry II. In his instructions to the bishop and sheriff of Worcestershire, issued not earlier than 1108, Henry I. says, "si amodo exurgat placitum de divisione terrarum, si est inter barones meos dominicos, tractetur placitum in curia mea. Et si est inter vavassores duorum dominorum, tractetur in comitatu. Et hoc *duello* fiat, nisi in eis remanserit." (*Fœd.*, vol. 1, pt. 1, p. 12). The meaning of the latter sentence I do

not understand. All that can be said, then, on the subject is, that between 1108 and the era in which Glanville wrote, the earlier modification of the wager of battle was introduced, and the Grand Assize instituted "through the favour of the sovereign and by the advice of his magnates;" but there is nothing to show that "the sovereign" was necessarily the younger Henry. I see no reason, therefore, to consider the law about "Mortauncestrie and Novel Disseisin," attributed to David, misplaced; especially as it was not identical with the Grand Assize. Had the regulation been copied from English law it would have approached more closely in form to its original. The principle of the suffrage was acknowledged by Edward III., but only carrried out by his grandson Henry IV.; and similarly, the principle of the Grand Assize may have been recognized by the elder Henry, and carried into Scotland by David, and finally established in England by the younger Henry, who was strenuous in insisting upon "the laws of his grandfather."

INDEX.

Abbot, nature of the office of, i. 67, 88, 321-329, 339; election of, 338
Abel, archdeacon of St. Andrews, ii. 69
Abercorn, see of, i. 12, 76
Aberdeen, see of, i. 335, 440; bishops of, 342, 382; ii. 66; burgh of, i. 443; its pre-eminence in the fishing-trade, ii. 173
Aberfraw, the court of, i. 108
Abernethy, Lawrence, i. 422
Abernethy, monastery at, supersedes Iona, i. 10, 334, 339; stone church at, 10, 22; schools of, 233; the treaty of, 137; treaty renewed, 142; ii. 401, 481
Abingdon, book of, i. 143; ii. 481
Abthanages, the, of early charters, i. 111, 247, 312 (*see* ii. 446, *seq.*)
Abuses in the Church, i. 176
Acre, variations in, ii. 271
Ada, illegitimate daughter of William, i. 433
Ada de Warenne, wife of Prince Henry, i. 214, 215, 433
Ada, daughter of Prince Henry, i. 225, 355; ii. 4
Adam, bishop of Caithness, ii. 18, 19
Adam, earl of Carrick, ii. 109
Adam, the miller of Dumfries, anecdote of, i. 307, 308
Adamnan, the biographer of Columba, i. 6, 8, 35; ii. 371, 380
Adbhar abbots (eligible to preferment), i. 38, 239. *See* Aelodeu
Adills, a Welsh chieftain, i. 63
Admore, confirmation charter of, i. 233
Adrian IV., Pope, i. 376
Advocate, the Lord, office of, ii. 134
Advocatus Ecclesiæ, the Continental, i. 329, 330; ii. 359, 464; name unknown among the Anglo-Saxons, i. 339
Ædui, the, of Gaul, i. 24, *seq.*; ii. 205
Ælfhere, i. 93, 248
Aelodeu, i. 239; ii. 260, 310, 322, 466
Ætheling, application of the name, ii. 204, 247, 263. *See* Athelings, Gulad
Æthelward, i. 63, 72; ii. 387
Æthelwine, i. 93
Agnes de Meranie, i. 417
Agricola, campaigns of, i. 1
Agricultural regulations, ii. 46, 47, 122, 123; their tendency to develop freedom, 155-161, 169
Aidan, a missionary among the Angles of Northumbria, i. 8, 9, 324
Aidan (Mac Gauran), a king of Dalriada, i. 14; "ordination" of, 35, 36.
Aids, feudal, ii. 81, 128, 144, 150; voluntary, 151, 152, 173, 178; traceable to a Roman source, 511
Ailred, referred to, i. 137, 148, 171, 184, 201
Aiteach-Tuatha (Attach-Tuatha), i. 245, 246; meaning of, ii. 167, 228; revolt of, 357, 358, 378
Alamanni, wergilds amongst, ii. 277
Alan; *see* Fitzalan
Alan, count of Bretagne, i. 151
Alan Durward, justiciary of Scotland, and Earl of Atholl, ii. 9, 37, 42, 51, 193; head of opposition to national party, 55; charge against, 60, 61; takes part in Henry III.'s French campaigns, 62; his return to Scotland, 63, 66, 76; Durward and the tenant farmer, 77; death of, 114
Alan Mac Roderic (de Insulis), ii. 90, 95
Alan of Galloway, i. 422; ii. 9, 24, 25, 101
Alban, application of the name, i. 40, 45, 184, 232; ii. 361, 369, 376
Albemarle, earl of, ii. 75
Albemarle, William, i. 200; earldom of Yorkshire conferred on, 208, 351
Alberic, bishop of Ostia; *see* Ostia
Alclyde (Dumbarton), i. 18; ii. 231
Aldred of Bamborough, i. 58, 69
Alexander I., i. 146, 151, 170; revolt

in the north and its suppression, 171-173; his contest against the English metropolitans, 174-182, 376; his policy in the kingdom, 183; dignitaries at his court, 184
Alexander II., birth of, i. 414; negotiation as to his marriage with a French princess, 416, 417; performs homage to John for the English fiefs, 424; knighted at St. Bride's, Clerkenwell, 429; coronation at Scone, ii. 1; outbreak in the north, 3; war with John, 4-8; marriage with the Princess Joanna of England, 10, 11; invasion of Argyle, 15; his policy there, 16-18; disturbances in Caithness, 18, 19; insurrections of the Gillescops, 19, 20; state of western Scotland, 21-24; events in England on the fall of De Burgh, 24, 25, 418; rebellion in Galloway, 25-29; danger threatened from England through the policy of Des Roches, 29-32, 418; death of Joanna, and marriage with Mary de Couci, 32, 33; intrigues of Walter Bisset, 34-42, 420; negotiations with Norway, 43, 44; his death, 45; his character, and policy in Church and State, 45-52
Alexander III., birth of, ii. 33; his coronation, 53, *seq.*; rival parties in Scotland at this time, 55, 422; his marriage with the Princess Margaret of England, celebrated at York, 57; his answer to Henry on pressing his claim for homage, 59; disputes connected with the regency, 61-79; ceremonious visits of Alexander and his queen to the court of Henry, 70, 71, 82; birth of a princess, 83; embassy to Norway, 83; expedition of Haco, 84-96; battle of Largs, 91; submission of the Hebrides, 97; events in the kingdom of the Isles, and submission of Man, 98-104; negotiations with Norway for their final cession, 104-106; contest with the clergy, 106-109; his precautions in reference to the policy of Edward towards Scotland, 110, 111; his homage at Westminster for the lands held in England, 113 (*see* 424, 425); death of Queen Margaret, 114; marriage of the princess (Margaret) to Eric Magnusson of Norway, 115; her death, 116; marriage of the Prince of Scotland, and his death shortly thereafter, 115, 116; assemblage of the estates at Scone to recognise his infant grand-daughter, "the Maid of Norway," as heiress of the throne, 117; second marriage, to Joleta, 117; account of the masque at Jedburgh, 117, 118; his council in Edinburgh Castle, 118; the fatal ride to Kinghorn, 119, 120; character as a man and a ruler, 120; anecdote of the Edinburgh widow and Alexander II., 121; view taken of the king's death by the chronicler of Lanercost, 122; his policy in the kingdom, 122-126
Alexander II., Pope, ii. 331
Alexander III., Pope, i. 182, 401; William's quarrel with, 382, 383
Alexander IV., Pope, ii. 62, 422
Alexis, a sub-deacon, i. 382
Alfgar, a lieutenant of Athelstan, i. 64
Alfred the Great, i. 65, 68, 154, 253, 294; ii. 294, 393, 431, 435, 438; his will, ii. 313
Alfred of Northumbria, i. 18
Alice de Rumeli, i. 222, 223
Alicia (Matilda), the empress queen, daughter of Henry I. of England, i. 188, 222; her unfaithful barons, 192; her entry into London after Stephen's defeat at Lincoln, 215
Allerton, Honor of, i. 217
Alleu-noble, what, ii. 256
Alleu-roturier, ii. 252, 258
Allobroges, "alien" population of Savoy, ii. 220; meaning of the name, 221
Allod, the, i. 102, 300; ii. 252, *seq.*, 451, *seq.*, 511
Allodial tenure, i. 80, 101, 103, 104, 436; ii. 214, *seq.*, 264; few traces of, at the Conquest, ii. 456, 459
Allotment, the, ii. 208, 256
Alltud, Welsh, i. 245, 272; ii. 221, 259; meaning of, ii. 234
Alne, the river, i. 146, 154
Alnwick, fortress of, i. 192; capture of William at, 369; ii. 40; town destroyed, ii. 5
Alternate succession, rule of; *see* Succession
Amas, Amasach, Ambactus, i. 101, 250; meaning of, ii. 47, 216, 217, 230, 327, 328
Ambacti; *see* Amas
Anacletus; *see* Peter of Leon
Andrea, Sant', church of, at Vercelli, ii. 8
Andrew, bishop of Caithness, i. 87
Angles, arrival of the, i. 3, 10; aggression of the, 11; relations with the Picts and Dalriads, 11-14
Anglesey, isle of, i. 163, 166

Anglia, East, settlement of Northmen on the coasts of, i. 43
Anglo-Norman chroniclers, errors of, i. 69
Anglo-Saxon system of law, i. 276; court, 316
Angus, district of, i. 86; its annexation, 87; earldom of, 236; earls of, 367; ii. 23
Angus (MacFergus), ascendency of, i. 13, 15, 39, 87, 125; successors of, 19, 20
Angus, the younger, i. 21, 22, 124; his sons, 23
Angus Mac Donald, of Isla, ii. 87, 90, 194
Angus Mac Heth, i. 189, 190
Anlaf; *see* Olave
Anselm, Archbishop of Canterbury, i. 151, 178, 194
Ansibarii, to be distinguished from the Ampsuarii, ii. 236
Antonine, wall of, i. 2; ii. 231
Antrustion (Frank noble), i. 275, 299; defined, ii. 252, 272, 276, 333, 451
Aodh (Hugh), son of Kenneth; his reign, i. 48; kingdom disputed with Cyric Mac Dungal, 49, 50; extinction of Scottish branch of his "clan," 91, 126
Aodh, king of Connaught, i. 6
Aodh "the Fair," of Dalriada, i. 19; laws of, 41, 108
Apollinaris Sidonius, i. 176
Appleby, i. 366
Aramean and Arian races, ii. 211
Arbroath, foundation of, i. 371, 441
Archæological Society of Ireland, works of, referred to, i. 37, 38
Architecture, Scottish, ii. 170-172
Ard-Biotagh, the, i. 104
Ardrighs, lords paramount of Ireland, i. 6, 30, 31, 140
Ardrighs, Pictish, authority of the, i. 37, 125
Argyle, the Dalriads in, i. 5; Scottish and Northern distinguished, 236; lords of, 345, 359, 391; ii. 23; invasion of, by Alexander II., 14-18, 45; bishop of, 17 (*see* Lismore), 51
Arimannia; *see* Hird
Ariovistus, characteristics of his settlement in Gaul, ii. 210, *seq.*, 461; resembles that of Genseric in Africa, 211
Armorica, the sea-coast of Moray, i. 33, 75
Arms, the, required for Scottish service, i. 208
Army, the national, ii. 136, 137
Arnfin, son of Thorfin, i. 83
Arpent, French acre, identical with Scottish, ii. 271
Arran, ii. 24, 88, *seq.*
Arrochar, ii. 90
Artga, king of Strath Clyde, i. 54
Arthur, King, i. 51
Arthur, Prince, son of Geoffrey Plantagenet and Constance of Brittany, i. 226, 414
Arundel, Earl of, i. 184
As, the Roman, ii. 343, *seq.*
Asketin, Sir, envoy from the Norwegian Court, on the cession of the Isles to Scotland, ii. 105
Assemblies, national yearly, at Edinburgh and Peebles, i. 439
Assize (Grand), i. 283; ii. 522
Assizes of the royal court, ii. 148
Athelings, the Northumbrian, i. 11
Athelstan, king of England, i. 59; ii. 397; incursion of, into Scotland, i. 60, 61; his dominions attacked by the confederated Scots and Norse, 62, 63; battle of Brunanburgh and its results, 64, 65; death of, 66; laws of, 261, 269, 276, 277
Athfodla; *see* Atholl
Atholl, Earls of, i. 184, 402, 427; ii. 34; descent of the, ii. 191-193
Atholl (Athfodla), district of, i. 32, 39; house of, 77, 110, 111, 122, 126, 156; earldom of, 236; ii. 16
Atholia, De; *see* De Atholia
Aufrida, an illegitimate daughter of William, i. 433
Augusta, "formerly known as London," i. 2
Augustine's Oak, conference at, i. 338
Augustine of Hippo, i. 324; ii. 331
Augustine (Austin), i. 9, 178, 324
Augustus, the Emperor, i. 319
Auisle, a Norse chieftain, i. 43
Aulicus, Anglo-Saxon office of, i. 316
Authorities, ancient English, not reliable, i. 142, 143, 147
Authority, subdivision of, in Celtic system of government, i. 26-32, 38, 77
Avenel, Gervase, i. 422
Aylwin, Bishop of Durham, i. 130, 135; ii. 386
Aymer de Maxwell, ii. 65

BADENOCH, ii. 20
Bailies of burghs, i. 298, 438
Baille, Irish, equivalent to the Scottish vill, i. 103, *seq.*; ii. 167, 340

Bakberand (bearing on the back stolen goods), punishment of, i. 258, 440
Bakers, burghal regulations anent, i. 302
Balance of power, in Celtic government, i. 26; ii. 205
Balliol, Bernard de, i. 201, 203, 368
Balliol, Edward, i. 184, 343
Balliol, Henry, ii. 42, 76
Balliol, John de, ii. 9, 25, 28, 65, 75, 76
Balloch, Walter (Stewart), ii. 79
Bamborough, fortress of (Gwrth Bryneich), i. 3, 92, 133, 196, 199, 201, 213, 422
Ban, William's regulations about the, ii. 14, 15
Bane, Donald; *see* Donald III.
Bane, Donald, a son of William Fitz Duncan; *see* Mac William
Bane, Donald, the younger, son of Donald Mac William, i. 361; rising against Alexander II., ii. 3
Banff, coast of, threatened by Norsemen, i. 76
Banners, mystic, of the Northmen, i. 94
Bannus regius, ii. 272
Barbarus, equivalent to *Theotisc wer* or *Deutsch'er*, ii. 214, 292
Bardolf, Hugo, i. 398
Barfleur, i. 370, 371
Bargoit, i. 23
Barith Mac Nocti, i. 57
Baronage, the (Second Estate), i. 292; their right to hold a court, 264, 265; the classes composing, ii. 140-143
Barons, English, their indignity to Prince Henry at Stephen's court, and its results, i. 194, *seq.*; league of, against David I., 201
Bathe, Sir Thomas, i. 413
Baug, meaning of, ii. 283, 343
Bavaria, boundaries of Carlovingian, ii. 237; wergilds in, 277
Becket, Thomas à, Archbishop of Canterbury, i. 363, 371, 377-379, 441; ii. 508
Beda's Ecclesiastical History referred to, i. 6, 7, *seq.*; his description of the disciples and successors of Columba, 8, 324; quoted as to regal succession, 21
Bedells of burghs, i. 298
Ben and *pen* of British topography, ii. 377
Benedict Biscop, ii. 263
Benedict VIII., Pope, i. 175
Benedict IX., Pope, i. 175
Benefice, the Imperial, i. 243, 244, 267; ii. 319
Benefices, ecclesiastical, re-valuation of, in the reign of Alexander III., ii. 114
Beneficiarius, the Roman, ii. 454
Benimund de Vicci, ii. 139
Berbers of Lybia, "Barbari," ii. 200
Bernard Castle, ii. 6, 28, 118
Bernham, David de, bishop of St. Andrews, ii. 54, 69
Bernicia, kingdom of, i. 4, 12, 96; ii. 391
Bertha, site of the ancient, i. 91
Berthynsak, i. 259
Bertram, Mr., blunders of, i. 3
Berwick, burgh of, i. 298, 418; ii. 26; Flemish guild of, i. 309; castle of, 373, 394, 396; ii. 5; monopoly of the foreign trade, i. 442; conflagration of, ii. 5; wealth of, 172
Bethoc (Beatrice), daughter of Malcolm II., i. 111
Bethoc, daughter of Donald Bane, i. 217
Beverley, St. John of, i. 62
Biataghs or Biotaghs, landholders paying rent, i. 103, 104; ii. 167, 261, 472-476
Bigod, Roger, Earl of Norfolk, and son-in-law of William, i. 435; ii. 11, 73
Bigot, Hugh, i. 372
Biland, monastery of, i. 221
Binnan-cneowe (*intra genu*), meaning of, ii. 313
Biorn the merchant, i. 442
Birnam Wood, story of, i. 124
Bishops, nomination of, i. 176; election of, 338, 343
Bisset, Walter, intrigues of, ii. 34-42, 420
Bisset, William, ii. 35, *seq.*, 50
Bissets, the, i. 443; ii. 34, *seq.*, 193
Blacar Godfreyson, i. 70
Black Rood, the, of Queen Margaret, i. 227
Blodwite, i. 259
Blood, the tie of, in ancient communities, i. 101, 338; ii. 294
Bocland, the royal grant of, i. 285; ii. 256, 263, 264, 313, 457
Boece, Hector, i. 87, 90, 124, 173; characteristics of his history, 117
Boedhe, son of Kenneth III., i. 97, 110, 121
Bohemia, boundaries of ancient, ii. 237
Bold-getal, i. 243; ii. 267
Bonaver, son of Ingemund of Man, i. 412
Bondmen, the servile, i. 246; ii. 155, 162-166

Bonds of union, in ancient communities, i. 101, *seq.*
Boneddig (Bonnacht), the, i. 245, 312; ii. 261, 475
Boniface VIII., Pope, ii. 113, 425
Borch Hamel, the, i. 261
Bordarii, of Lincoln and York, i. 134; the class, ii. 137, 161, 270
Border fortresses, i. 192
Borh; *see* Burh
Borough-English tenure, i. 243; ii. 268
Bowyer, Walter, continuator of Fordun, i. 90
Brabant, Reiters of, i. 196, 364; ii. 5
Bran, nephew of Constantine, i. 20, 23
Brande Erbe, ii. 323
Brandreth Stone, the, i. 223
Brechin, foundation of, by Kenneth II., i. 88; see of, 335, 441; ii. 51; the Culdees and chapter of, i. 341.
Brehon (Breen, Breithimh), the Vergobreith (*which see*), i. 26, 31, 103, 237; ii. 305
Breint, the word in Welsh for "privilege," i. 31; ii. 224
Bretwaldas, Anglo-Saxon, i. 32; ii. 394
Breyr, the noble in South Wales, i. 31; ii. 259
Brian Boru, i. 122
Bricg-bote; *see Trinoda necessitas*
Brigham, conference at, between William and Henry II.'s deputy, the bishop of Durham, respecting the southern fortresses, i. 395
Briodwr, the, ii. 314
Britain, probable origin of the name, ii. 224
Britons, hostilities of the Angles with the, i. 11; territories to which they were driven, 16 (*see* Cymri); incursions of the Angles upon, 17-19; Dunblane burnt by, in Kenneth I.'s reign, 40
Brough, i. 366
Bruce, Robert de. *See* Robert de Bruce
Bruce, King Robert, i. 32, 236, 434; ii. 33, 137, 142
Brugaidhs, Irish freeholders, equivalent to Scandinavian Bonders, i. 103; ii. 167, 260, 261
Bruidi Mac Fergus, defeats his cousin Egfrid of Northumbria, i. 12, 15, 19, 20
Bruidi Mac Malcon, king of the Picts, i. 7
Bruidi, son of Bargoit, i. 23
Brunanburgh, battle of, and its results, i. 63-66
Bruno, Bishop, i. 174
Brusi, son of Sigurd Lodverson, i. 112, *seq.*
Bryn-Albyn; *see* Drumalban, Mounth
Bryneich (Bernicia), the country from the Tyne to the Forth, i. 4, 29
Buchan, coast of, attempt of Norsemen to land on, i. 76; earldom of, 236; mentioned in the Book of Deir, ii. 500; earl of, i. 427 (*see* Comyn, William); ii. 20, 55, 65, 76, 112
Buchanan, George, i. 117
Burgage-tenure, i. 299, *seq.*
Burgesses, original, chiefly of foreign origin, i. 309, 371; influence of burgher class on the country, 310; their monopoly of commerce, 414, 442; ii. 124; their earliest association with the clergy and baronage as a Third Estate, 152
Burghead, i. 116
Burghs, Anglo-Saxon, i. 295, 296, 308; Scottish royal, 297; privileges of, 297-300, 441; regulations of, 300-305, 308; the lesser, 309; a source of profit to the Crown, ii. 128
Burghs, the five, of the Mercian confederacy, i. 70, 295
Burgh laws, the, i. 237, 295; ii. 335, *seq.*
Burgh-moots, i. 298, 301, 302; ii. 152
Burgoin, Sir Robert, i. 279, 280
Burgundy, administration of justice in, i. 274; ii. 279
Burgundians, the, ii. 210, 258; traces of Celtic element among the, 218; wergilds of, 279
Burh, Burh-bote, Burh-Thegns, i. 104, 294, *seq.*; ii. 336, *seq.*
"Burnt Njal, story of," referred to, i. 94; ii. 289, 345
Bute, ii. 24, 88, *seq.*
Butler, Anglo-Saxon office of, i. 316
By, the, and the Vill, ii. 165. *See* Caster, Castra

CADWAL of Gwynneth, i. 17.
Cadwallader, i. 17
Cæsar's Commentaries referred to, as illustrative of the Celtic system of government, i. 24-28, 246; ii. 197, *seq.* *See* Celt
Cain; *see* Can
Cait, son of Cruithne, i. 32
Caithness, promontory of Caith, i. 32; subjugation of, by Liotr, earl of Orkney, 84; rescued by the Moray chieftains, 85; contests for the earldom, 114-116, 411, 412; see of, 335, 441;

extent of the province, 401 ; savage treatment of the bishop by Harald Mac Madach, 413 ; murder of Bishop Adam, ii. 18, 19 ; earls of, 23, 45
Caittil the Fair, of the Hebrides, i. 44, 56
Caldenlee, ii. 39, 40
Caledones, a division of the Picts, i. 30
Caledonians, i. 2
Calixtus, Pope, i. 182
Callander, church of, i. 336
Cambrensis ; *see* Giraldus
Cambuskenneth, abbey church of, ii. 72
Camerarius, office of, i. 314
Campbell, Colin, ancestor of the Dukes of Argyle, ii. 195
Campbell, the clan, ii. 18, 195
Can and Cuairt (tribute and visitation), leading privileges of ancient royalty, i. 10, 20, 37, 41, 87, 125, 328, 329, 336, 437; ii. 12, 133, 447
Cancellarius, office of, i. 314
Candida Casa (Whithern), see of Ninian, i. 18, 21, 71, 357 ; ii. 355 ; revival of, in the 12th century, i. 357, 358; did not belong to the Picts, ii. 382
Canons ; *see* Culdees, Church, Monks
Canterbury (*see* Anselm, Bardolf, Becket, Hubert), i. 371; cathedral of, 374
Cantilupe, Matilda de, guardian of the young bride of Alexander III., ii. 60
Canton, Centena, i. 103; instituted, ii. 334. *See* Hundred
Cantred, the Irish and Welsh, i. 103
Cantyre, district of, i. 167, 236 ; ii. 12, 16, 86, 372. *See* Kintyre
Canute, i. 93 ; his expedition to the north, 96, 97 ; ii. 431
Canute the Wealthy, a citizen of Berwick, ii. 172
Caradoc ; *see* Ceretic
Carham, battle of, i. 93, 96, 99
Carlisle, gift of, by Egfrid to St. Cuthbert, i. 17 ; rebuilt by Rufus, 129, 143, 193 ; fortress of, 192 ; a fief of Prince Henry, 193, 215 ; treaty of, 218, 352 ; siege of, 364 ; blockade of, 366 ; Alexander II. at, ii. 6
Carnifex, the, ii. 212
Carnutes, the, of Gaul, i. 25 ; ii. 131
Carrick, deanery of, i. 358 ; earldom of, 390 ; earls of, 240 241, 390 ; ii. 66, 109, 495 (*see* Duncan of Galloway, Niel)
Caste, its predominance and phases, ii. 198, 199, 317
Caster and By mark the Northman, ii. 240, 375, 433-437. *See* Castra.
Castle-guard, period of service on, i. 306
Castle Howard, i. 132
Castles attached to burghs, i. 297, 306, 397 ; regulations as to the castellan, 306-308
Castles, Scottish, ii. 171, 172
Castra, different pronunciation of names derived from, ii. 240. *See* i. 293, 296
Caswallon, i. 17
Catrail, the, a defensive barrier against the Angles, i. 16
Cattle-lifting, crime of, i. 259, 436, 440
Cavel ; *see* Gavel
Ce, son of Cruithne, i. 32
Celestine, bishop of Rome, i. 322, 347
Cellach, a northern Mormaor, i. 75
Celt, the, and the Teuton, ii. 197-231 ; mistakes regarding the characteristics of, 197, 198 ; tendency of the Celts to coalesce, 218
Celt-Iberians, ii. 218, 222
Celtic dialects, ii. 246, *seq.*
Celtic system of government, exemplified in ancient Gaul, i. 24-26 ; amongst the Cymri, 29, 30 ; in northern Britain, 30-37 ; peculiarity of—its separation of military and judicial authority, 26-32, 38, 77 ; ii. 304. *See* Picts and Scots
Celt-Illyrian Japodes, ii. 218
Celto-Ligurian Salyes, ii. 218, 219
Cen-cinneth, head of a race by "right of blood," i. 87, 88, 103, 104, 237. *See* Cyning
Centena ; *see* Canton.
Ceolfred, abbot of Wearmouth, i. 10, 13
Ceorl (Churl), the Anglo-Saxon, i. 237, 313
Ceretic (Caradoc), i. 16, 17
Chalmers' Caledonia, i. 118, 127
Chamberlain of the Court, i. 314, 317
Chancellor of the Court, i. 314, 317
Chapter, privileges of the, i. 341
Charlemagne, i. 275, 318, 319
Charles Martel, i. 313
Charter of William the Conqueror, extract from a, i. 149
Charter, rise of the, i. 284, *seq.*, 314
Charters, early external observances in lieu of, i. 249 ; necessary in the reign of William, 436 ; of burghs, 441, 442
Chattan, the Clan, i. 241, 272
Chester, Earl of, *see* Ranulph
Chester, i. 353 ; Earl of, 397
Chester le Street, i. 71, 141 ; ii. 240
Chevalerie, the royal, i. 315
Chewill, the Clan, i. 272

Chichester (Cissa's *ceaster*), i. 293; ii. 240
Childeric, laws of, i. 271
Chisholms, the, i. 443
Chivalry, courts of, i. 317
Chlovis, i. 266; ii. 213, *seq.*; policy of, 290, *seq.*
Chorepiscopi, i. 325
Chrene-cruda, law of, ii. 334
Christianity, sketch of its early history in Britain, i. 321-333; conversion to, of the northern Picts, *see* Columba; of the southern Picts, *see* Ninian; ecclesiastical disputes, 9; becomes the religion of the Orkneys, 86. *See* Church, Clergy
Christina, daughter of Alan of Galloway and Margaret of Huntingdon, ii. 25
Church in Scotland, first collision with the State, i. 174-182; state of, when David I. ascended the throne, 333, 334; its reconstruction commenced by Alexander, 185, 335; new sees added by David, 335, 336; suppression of Culdee societies, 337; David's proceedings in the diocese of St. Andrews, 337-340; escapes subjection to the English Church, 373, 377; attempt of Henry III. to appropriate its revenues for his projected crusade, ii. 56, 61; Alexander III.'s contest with the clergy, 106, *seq.*: the "new valuation" of church property, 139. *See* Christianity, Columba, English Church, Gaelic Church, Iona, Irish Church
Churl, title of, i. 245
Churl-born tenants at rent, ii. 51
Cimmerians, the, ii. 202
Cios; *see* Can.
Ciric, son of Cruithne, i. 32
Civic population, i. 309
Civil Law, the, in England, ii. 507, *seq.*
Clackmannan, William's illness at, i. 399
Claims, the English, on Scotland, ii. 384-429
Clan Aodh Mac Kenneth, i. 91
Clement, bishop of Dunblane, ii. 44, 51
Clement III., Pope, i. 379
Clement IV., Pope, ii. 108
Clergy, marriage among the, i. 149; influx of foreign clergy into England after the Conquest, 177; Alexander III.'s contest with, ii. 106, *seq.*; recourse to, in courts of law, i. 134; wealth of, 138; old assessment of, ii. 276
Clerical tonsure, early disputes as to form of, i. 9
Clerici Nativi, the, ii. 379
Clientes, the (Gallic magnates), i. 251; ii. 216, 217, 236
Clifford, Walter, i. 422
Clipston, meeting of William the Lion with Richard at, i. 397
Clitheroe, battle of, i. 199
Clontarf, battle of, i. 74, 111, 161
Clugny, monastery of, i. 351
Cnicht, knabe, or sven, ii. 311
Cnicht-service, i. 185; ii. 136
Cognatio, the Roman, ii. 309
Coigny, ii. 207, 297, 462
Coinage, purity of the, ii. 174; among the Romans, Scandinavians, etc., 341-352
Coldingham, priory of, i. 170; abbey of, ii. 5
Colin, son of Indulf, reign of, i. 77
Colla, the clan, i. 38; ii. 364
Colman, a monk of Iona, i. 9
Colonus, the, ii. 318, 338
Columba, circumstances connected with his leaving Ireland, i. 6; Iona granted to him, 6, 7; his mission to the northern Picts, and its success, 7, 8; distribution of his relics, 22; old verses ascribed to, 32, 33; his relics collected and enshrined at Dunkeld, 41; church of, 166
Columbanus, founder of the monastery of Bobbio, i. 328
Colvill, Thomas de, i. 425
Comes, office of, i. 252; ii. 209, 252. *See* Graphio
Comet, the, of 1018, i. 95
Commendation, bonds of, i. 257, 295. *See* Hlaford-socn, Trust.
Commerce, laws regulating, i. 300-305, 440, 441; ii. 124, 125
Commot, the Welsh, i. 253, 254, 263; ii. 304
Communitas, meaning of, ii. 137, 149; the two communities, 137-154, 262
Communitates Comitatum, the, i. 405
Complicity, punishment of, i. 264-266
Compurgation, in the system of the Voisinage, i. 266, 267; ii. 344, *seq.*
Comyn, John the Red, ii. 35, 65, 79
Comyn, Richard, nephew of the chancellor, i. 217; ii. 55
Comyn, Robert, a Norman Baron, i. 130, 137
Comyn, Walter, Earl of Menteith, ii. 21, 53, 55, 64, 72, 74; death of, 79
Comyn, William, Earl of Buchan, ii. 55, 76

Comyn, William, Archbishop of York, i. 217
Comyn, William, the Scottish Chancellor, and Earl of Buchan, i. 211, 421, 422, 427, 430; his proceedings at Durham, 216, *seq.*; elected by the Culdees to the bishopric of St. Andrews, 343
Comyns, the, i. 342; ii. 35, *seq.*, 50, 55, 74, 76, 192
Conal, king of Dalriada, i. 5
Conal (Mac Teige), i. 19
Conan, Duke of Bretagne, i. 225
Concilium regis, the, ii. 148, 149
Confederacies, early, of Scotland, i. 236
Connaught, i. 29; meaning of the name, ii. 357
Connor; *see* Cunechat
Constable, feudal office of, i. 186, 306; duties of, 315
Constance, grand-daughter of Prince Henry, i. 225
Constantine I. of Scotland, events of his reign, i. 41-48, 126; division of his "Clan" into two hostile factions, 92
Constantine II., reign of, 53-69; his abdication, 67; becomes Abbot of St. Andrews, 67; temporary resumption of the sceptre, and death subsequently at St. Andrews, 73
Constantine III., son of Colin, reign of, i. 91, 126
Constantine, Earl of Fife, i. 279, 318
Constantine, leader of the men of Strath Clyde, i. 54
Constantine (Mac Fergus), king of the Picts, i. 19, 20, 39, 87, 126, 334
Conviva Regis, ii. 214, 262, 291; apparent meaning of, 297
Conway, battle of the, i. 55
Copyhold tenure, ii. 269
Coquet, the river, i. 369
Corbridge-on-Tyne, battle of, i. 58, 59, 71
Coronation, first, recorded in Scotland, ii. 1
Cosherie, ii. 207
Cospatric of Dunbar, i. 129, 214; becomes Earl of Northumberland, 132, 184; his attack on Scottish possessions in Cumberland, 133; his flight, 137, 138
Cotsetlas, the class, ii. 159, 270
Cottagers, or free labourers, class of, ii. 158-162
Council, ecclesiastical, earliest recorded, i. 53
Council, the great, of the nation, ii. 148, 149, 151
Councils at London, i. 188, 212, 386; ii. 108
Count, office of, i. 253
Counties, subdivisions of, ii. 339
Country bishops, i. 325
Court, a, established in Scotland, i. 108, 109; pomp and ceremonial introduced at, by Queen Margaret, 149, 150; reforms introduced by Alexander I., and followed up by David, 311, 312
Court of *Piés-poudrées*, i. 304; ii. 374
Courts of Justice (*see* Justice), the royal, ii. 130-134; that of the regality, 134, 135; court barons, 135
Cousins, marriages between, ii. 331
Couvre-feu, Norman regulation of the, i. 260, 302
Cowal, principality of, i. 5, 255; ii. 16, 18
Cowarbs, hereditary abbots, i. 41, 185, 241, 330, 341; cowarb lands, ii. 469
Cows, mulcts of, for various offences, i. 258, 265, 437; ii. 47, 306; legal value of, 47, 158, 351. *See* Wergilds
Cowyll, the Welsh, ii. 325
Craven, harried by the army of David I., i. 199, 222
Creagh, prevalence of the, i. 22, 259
Criminal procedure, *see* Justice
Crinan (Hundi?), a Scottish noble, i. 85
Crinan, abbot of Dunkeld, i. 111, 122, 312
Cripples Gate in ancient burghs, i. 306
Cro, meaning of, ii. 286. *See* Wergild
Cross, swearing upon the archbishop's, i. 417, 418
Crown-pleas, jurisdiction in the, i. 283, 438; ii. 128, 133
Cruithne and his seven sons, i. 32
Cruithne (Irish Picts), i. 21; ii. 361, 369
Crusade, the third, i. 387, 394, 396
Cu, prince of Strath Clyde, i. 41, 50
Cuairt, privilege of (visitation, "royal progress"), i. 88, 89, 238; ii. 462. *See* Can
Culdee monasteries at Mortlach and Monymusk, i. 99, 100; society of Lochleven, 121, 340; Irish and Scottish, 333; Culdee societies suppressed by David, 337; their condition after his reign, 340, *seq.*; contest at St. Andrews, 342-344
Cumbraes, the, ii. 89
Cumbria, English and Scottish, i. 18; confounded with Cumberland, 70, 71; long-continued anarchy in English Cumbria, 72. *See* Cymri, Strath Clyde

Cumberland, i. 70 (*see* Cumbria); events in, 71, 72, 76, 79, 131, 133
Cunechat (Connor), the last of the male line of Angus, i. 87
Cunningham, district of, i. 18
Currie, Sir Piers, ii. 93
Cursus Apri, grant of the, to St. Andrews, i. 155, 185, 249
Curtois, Robert, i. 189
Cutton Moor, near Northallerton, scene of the battle of the Standard, i. 204-207
Cymri, the, i. 16, 102; encroachments on, by Egfrid, 17; meaning of the name of, ii. 221, 238
Cymru; *see* Cumbria
Cyn, the, ii. 312, *seq.* *See* Kin
Cynedda Gwladig, i. 8; ii. 230
Cynghellwr, Welsh office of, i. 29, 31, 103, 254, 313; ii. 304
Cyning (Konung), the princeps, or Cencinneth in ancient Germany, i. 27; ii. 204, 252, 312, 464
Cyric (Ciric, Grig, Girg, Gregory the Great), contest for supremacy with Aodh, i. 49; his reign, and posthumous fame, 50, 51, 87, 108, 334
Czeks, same as Jazyges, ii. 237

DALARAIDE, district and family of, in north of Ireland, i. 14, 29; ii. 363-365
Dalfiatach, family of, in north of Ireland, i. 29
Dalriada, kingdom of, i. 5; subjugation of, 15; ii. 12; kings of, ii. 186, 190, 191
Dalriada, Irish, ii. 227; a questionable principality, 365
Dalriads (Scots), arrival of the, i. 5, 10; sketch of their history till their subjugation by Angus, A.D. 736, 13-15; restoration of the line of Kintyre, 19
Damages, the award of, i. 282
Damnonii, the, ii. 231, 355, *seq.*
Danegeld, the land-tax so called, ii. 459, 460, 513
Danelage, the, i. 157, 224, 233, 257, 267, 310; boundary of, ii. 273; classes in, 324; greater amount of freedom in, 269-274
Danes, ravages of, i. 40; the, of Northumbria, 57, *seq.* *See* Guthrum
David de Bernham, bishop of St. Andrews, ii. 55, 69
David de Graham, ii. 66
David de Hastings, ii. 193
David de Lochore, a regent, ii. 66
David, Earl of Huntingdon, son of Prince Henry, i. 225, 364, 366, 371, 375, 386, 391, 395-397, 414, 417; death of, ii. 9; his family, 9, 10
David, Earl; *see* David I.
David Haraldson, of Orkney, i. 432
David I., i. 87, 151, 170, 184, 187; an English baron, 188; rebellion in Moray, 189-191; enters England with an army in support of the claims of his niece, Alicia, 192; his arrangement with Stephen, 193; rupture with England, 194-212; his heterogeneous army, 196, 208; battle of Clitheroe, 199; battle of the Standard, 205; arrangements for peace, 213; another rupture with Stephen imminent, 218, 219; disturbance caused by Wimund the impostor, 219-221; his death, 227; his character and conciliatory policy, 228-231; his monastic foundations, 231; aggrandizement of his kingdom on its southern frontier, 232-234; system of government introduced by, 235, *seq.*; leading features of his civil policy, 235-320, *passim*; his policy developed under William, 436, *seq.*
Davoch, or "pasturage," ii. 271, 379
De, names with, territorial, and not necessarily implying foreign descent, i. 292; ii. 490-492
De Atholia, family of, ii. 193
De Bar, Count, i. 372
De Clare, i. 372
De Ergadia, Lords of the Oirir-Gael, i. 241; ii. 22, 193-196
De Insulis, Lords of the Oirir-Gael, ii. 22, 193-196
De Lacy, ii. 99
De Moreville, family of, i. 184, 317; Hugh, 214; Richard, 367, 387; William, 392
De Mowbray, Robert, i. 146, 159, 187, 200, 366, 372
De Ros, Lord, i. 417
De Vesci; *see* Eustace de Vesci
"Debateable land," the, i. 8; ii. 372, 380
Deempster, office of, i. 27, 29, 103, 237, 280, 282
Dee, the river, i. 87
Deerham, in Cumberland, Kenneth II. at, i. 79
Degrees, forbidden, ii. 330-332
Degrees of kindred, i. 242; ii. 309-340
Deheubarth, the country from the Humber to the Tyne, so called by the Britons, i. 4

Deir, the book of, ii. 499-501
Deira, kingdom of, i. 4, 71, 128; ii. 391
Denarius, the, ii. 344, *seq.*
Dependence, ancient tests of, i. 13
Dermot Mac Malnembo, of Leinster, i. 162, 163
Dervorguil, grand-daughter of David Earl of Huntingdon, and wife of John Balliol, ii. 9, 25, 33
Derwent, the, i. 58, 71
"Desert, the," a tract of hill and moor so called, i. 4, 5, 16
Deur; *see* Deira
Dicaledones, a division of the Picts, i. 2, 30
Diceto, interpolated, ii. 427, 428
Dignitaries of the Scottish Feudal Court, i. 317, 318
Dingwall, i. 236; lands of, 401; ii. 4
Diomain (man without property), ii. 261
Displacement, theory of, ii. 484-501
Disseisin, punishment of, i. 270, 283, 284; ii. 49, 177, 498, 522
Distyn, the Welsh office of, i. 312; ii. 304
Divination and possession of land, connection between, among the Gael and Scandinavians, i. 34
Dôl, see of, in Brittany, i. 4
Dolfin, son of Cospatric, i. 129; driven from Cumberland by Rufus, 143
Dollar, battle of, i. 47
Domesday Survey of England, i. 129, 224, 285, 286; ii. 516
Donachie, the clan, ii. 193
Donald II., originally associated with Cyric in the supreme authority, i. 51; afterwards reigned alone, 52
Donald III. (Bane), reign of, i. 154, 171; expedition of his nephew Duncan against him, 157; his second reign and subsequent deposition, 158, 159; his posthumous fame, 159, 160
Donald Mac Alpin, reign of, i. 41, 108
Donald Mac Heth, i. 357
Donald Mac Malcolm, i. 350
Donald Mac Neil, ii. 14
Donald Mac Teige (O'Brien), appointed regent of Man, i. 346, 347
Donald Mac William (Donald Bane), *see* Mac William
Donald, the clan, ii. 194
Donation of Constantine, i. 176, 377
Doncaster bestowed on Prince Henry, i. 193; illness of Malcolm IV. at, 358
Doncorcin of Dalriada, i. 19
Dooms, secular and ecclesiastical, i. 53
Dornoch Firth, i. 116
Douglas, Bryce, bishop of Moray, i. 335
Dovraeth, ii. 207
Dowry, the test of marriage, ii. 325, 326
Dragon of Wessex, the royal standard, i. 196, 206
Dreux, Count de, ii. 117
Drontheim, archbishop of, i. 348
Drost, king of the Picts, i. 20; ii. 185
Druids, i. 273; Pictish, 7; Gallic, 28, 30; ii. 204, 218; Æduan, i. 30; inauguration of kings by, 28, 35, 36; the name, ii. 247
Drumalban, the mountain range, part of which constituted the eastern boundary of Dalriada, i. 5, 7, 13; ii. 377
Drumlay, sandbanks of, i. 90
Duân of Alban, i. 20; ii. 372
Dublin, northmen of; *see* Fingal, Irish Northmen, Man, etc.; capture of, by the English, i. 349
Duchas tenure, i. 101, *seq.*, 237; ii. 262. *See* Allodial tenure
Duchasach; *see* Duine-Uasal
Dufagan, earl of Fife, i. 184
Duff (Dufagan), a witness of the Charter of Scone, i. 124
Duff, son of Malcolm I., reign of, i. 77; line of, 110
Dugal Mac Roderic (de Insulis), a leading magnate of the Isles, ii. 85, 90, 95
Dugal, the clan, ii. 193. *See* De Ergadia
Dugall (Black Strangers), i. 42; ii. 430. *See* Fingall
Duine-Uasal or Duchasach, the free proprietary, i. 102, 208, 237, 245, 248, 250, 361; ii. 262
Duke, office of, i. 253
Dumbarton (Alclyde), surrender of, to the Northumbrians and Picts, i. 18; besieged and taken by Norsemen, 43; burgh of, 309
Dunbar, Earls of, i. 184, 399; ii. 27, 55, 66; town of, 5
Dunblane, burnt by the Britons in Kenneth I.'s reign, i. 40; see of, 335, 336, 355, 441; ii. 51; bishop of, ii. 44, 65, 76
Duncan, earl of Fife, i. 266, 367, 409
Duncan I., grandson of Malcolm II., i. 97; reign of, 110-116; contest with Thorfin, and subsequent assassination by Macbeth, 115, 116; family of, 122
Duncan II., son of Malcolm III., i. 141, 154; his reign, 157, 158; charters ascribed to, 285

Duncan, Mormaor of Caithness, i. 82, 83
Duncan of Argyle, ii. 43, 44
Duncan of Galloway (grandson of Fergus), i. 358, 381, 387, 390; becomes first Earl of Carrick, 390
Duncansby Head, i. 85, 115
Duncrub, battle of, i. 77
Dundurn (Dunadeer, Dornedeore), i. 49, 51, 125
Dunfermlyn, first charter of, i. 190, 255, 286; William at, 416
Dun-Fothir (Forteviot, Dunfœder), capital of Fortreim, i. 39, 41, 49, 62, 125; ii. 132
Dungal of Stranith, ancestor of the Randolph family, i. 358
Dungall's Bay (Nœp), battle of, i. 85
Dungal of Lorn, i. 15
Dunkeld, foundation of, i. 21, 22, 39, 334; superseded by St. Andrews, 22, 50, 334; destruction of, by the Danes, 40, 41; restored by Kenneth I., 41; see of, 335, 441; ii. 12, 500; division of the diocese, ii. 17; bishops of, 66; dean of, 69
Dunmore; *see* John (Sir) de Dundemor
Duns (earthworks or hills), ancient, i. 7, 12, 110.
Dunscath, castle of, i. 385
Dunsinnan, i. 87, 124
Durham, besieged by Malcolm II., i. 92; by Duncan I., 114, 123; conference at, between William and John, 429; monastery of, 170, 179; bishopric of, 215, *seq.*; bishop of, 364, 365, 372, 389, 394, 396, 415, 417; ii. 30 (*see* Aylwin, Ealdun, Elfsi, Geoffrey Walcher)
Durrow, abbot of, i. 6. *See* Columba
Durward, i. 342; *see* Alan
Dusty-foot, the, of Fair-time, i. 304, 305; ii. 474
Dutigern, i. 3
Dux; *see* Toshach
Dyke-pot, ordeal of the, i. 269
Dyrness (Turness, in Hoy), i. 115
Dyved (South Wales), i. 29

EACHMARCACH, king of Dublin, i. 162
Eadbert, king of Northumbria, i. 16, 18
Eadmer, bishop of St. Andrews, i. 179-181, 186
Ealdorman, office of, i. 93, 102, 105, 253, 294; ii. 134
Eadulf, i. 69
Eadulf Cudel, i. 95, 96; ii. 391, 392
Ealdun, bishop of Durham, i. 93, 96, 135
Eanfred, a Northumbrian prince, i. 11, 20
Earaic; *see* Eric
Eardulf, a Bernician prince, i. 71
Eardulf, a Cumbrian bishop, i. 58, 71
Eardulf, bishop of Carlisle, i. 211
Earl, barons who enjoyed "the rights and customs" of an, i. 439; ii. 495
Earl, office of, i. 253-255
Easter, disputes as to the time of its celebration, i. 9; question about, in the British churches, 331
Eastern Empires, system of caste in, ii. 199, *seq.*
Ecclesiastical affairs; disputes in the 7th century, i. 9; Queen Margaret's views on, 148, 149; first collision between ecclesiastical and secular powers in Scotland, 174-182. *See* Christianity, Church, Columba
Echevins, i. 256, 311
Eclipses, solar, referred to, i. 51; ii. 85
Eddirton, castle of, i. 385
Edgar, king of England, i. 91; laws of, 93; ii. 386
Edgar, son of Malcolm Ceanmore, i. 151; reign of, 160-170
Edgar the Atheling, takes refuge in Scotland from William the Conqueror, i. 129-131, 133; his escape to Flanders, and subsequent return, 136, 138; his submission to William, 138; expelled from his lands in Normandy, and again seeks refuge in Scotland, 141; his subsequent movements, 142, 145, 159; ii. 516
Edinburgh, acquisition of, by Indulf, i. 76, 126; burgh of, 298; castle of, 373, 394, 425; ii. 28, 62; national assemblies at, i. 439
Editha (Matilda, the "good Queen Maud"), daughter of Malcolm III., i. 151-153
Edmund, king of England, i. 63, 70
Edmund of East Anglia, i. 43
Edmund, Prince, son of Henry III. of England, ii. 110, *seq.*
Edmund, son of Malcolm III., i. 151, 158, 159
Edred, king of England, i. 72
Edred, Saxon abbot of Carlisle, i. 71
Edred of Northumbria, i. 58, 71
Edward I., ii. 5, 111
Edward, bishop of Aberdeen, i. 335
Edward, son of Alfred the Great, i. 68
Edward, son of Malcolm III., i. 151
Edward the Confessor, i. 122

Edward the Constable, i. 184, 189, 317
Edwin of Northumbria, i. 16, 127
Edwin, earl of Mercia, i. 128; rebellion of, 135
Edwin's Burgh, in Lothian, i. 16; ii. 230
Edwin's Cliff, i. 16
Egbert, bishop of York, i. 332
Egfreda, daughter of Bishop Ealdun, i. 135
Egfrid, a king of Northumbria, i. 11; his expedition across the Forth, and subsequent overthrow of his forces, 12, 13, 71
Egillsey, islet of, residence of the bishop of Orkney, i. 401, 404
Egypt, warrior-caste in, ii. 199, 200; the Nomes of, 200; the Pi-Romi of, what, 202; law of marriage in, 329
"Eighteen hundreds," meaning of, ii. 283, 351, 439, 440, 462
Eildon, i. 16
Einar, son of Rognwald, his expedition to the Orkneys, i. 80, *seq.*; sons of, 82, 94
Einar, son of Sigurd Lodverson, i. 112, 113
Eiscir-Riada, meaning of, ii. 227
Ekkial; *see* Oikel
Election, theory of, in Gaelic institutions, i. 34
Elfsi, bishop of Durham, ii. 390
Elgin, cathedral of, i. 116; castle of, 289
Elizabeth, natural daughter of Henry I., i. 357
Elli of Northumbria, i. 42, 43
Emmesey, priory of, i. 223
Emphyteusis, ii. 269, 319, 454
England, revenue of, ii. 145
English Church, i. 321, 324, 327, 332, 373, 377, *seq.*
English claims on Scotland, ii. 384-429
English fiefs of the Scottish Crown, i. 193, 213, 223, 352, 362, 397-400, 415; ii. 5 *See* Northern Counties
Eocha, of Strath Clyde, associated in the government of Scotland with Cyric, i. 50, 51, 54
Eocha, son of Indulf, i. 77
Eogan of Strath Clyde, i. 64, 65, 98
Eogan, thane of Rothenec, i. 289
Eogan "the bald," the last recorded king of Strath Clyde, i. 98, 99
Eoganan, nephew of Constantine, i. 20, 23
Eorl, office of, i. 93, 102
Eorlcundman, the, i. 80
Episcopal revenues, ii. 59, 138; went to the royal treasury during a vacancy, 129
Equites, the, of Gaul, ii. 204, 218
Eric, Earaic (man-payment), i. 330; ii. 286, 307. *See* Wergild
Eric, first king of Sweden, i. 42
Eric Magnusson, king of Norway, son-in-law of Alexander III., ii. 114
Eric of the Bloody Axe, son of Harald Harfager, becomes an ally of Athelstan, i. 65; his attack on the Hebrides, 66, 161; re-established in Danish Northumbria, and subsequently slain by Magnus Haraldson, 74, 82; sons of, 82; his daughter Ragnhilda, 83
Erlend Haraldson, i. 402, 406
Erlend, joint earl of Orkney with Paul, i. 165, 400
Erlend Thorfinson, i. 402; ii. 23
Erling, regent of Norway, i. 432
Ermengarde, marriage of, to William the Lion, i. 388, 391, 433, 435; ii. 1; dowry of, i. 374
Erse or Irish, Normans, and Scots, different acceptations of, i. 428
Espec, Walter, i. 190, 195, 201, 212
Estates, the two, of the realm—the clergy, and the baronage and freeholders, i. 292; ii. 137-143. *See* Burgesses, Third Estate
Esterling, the; *see* Sterling
"Estimation," in the Levitical code, ii. 286
Ethelbald the Proud, i. 16
Ethelfleda, daughter of Alfred the Great, i. 57, 68
Ethelfrith, King of Northumbria, and his sons, i. 11, 14, 16
Ethelred, abbot of Dunkeld, earl of Fife, and son of Malcolm Ceanmore, i. 124, 151, 156
Ethelred, king of England, i. 93, 127, 276
Ethiopia, "caste" in, ii. 199
Etrurians, the, ii. 201, 202
Eusebius, bishop of Vercelli, i. 324
Eustace, Count of Boulogne, i. 153
Eustace de Vesci, married to Margaret, an illegitimate daughter of William the Lion, i. 399, 417, 430; his flight to Scotland, 431; sent to Rome as a deputy by the barons, ii. 2; shot at Bernard Castle, 6; influence of, 417
Eustace Fitz-John, i. 196, 199, 202, 205
Ewen, Lord of Argyle, ii. 14, 16, 44, 51, 86, 95, 103
Ewen, thane of Rothenec, ii. 156
Export trade forbidden by Alexander III., ii. 124
Eyre, courts of, i. 317

Eystein, king of Norway, his descent on the English and Scottish coasts, i. 406

FÆR-BENA, meaning of, ii. 264, 324
Fairs in burghs, regulations as to, i. 304
Falaise, William a prisoner at, i. 372; treaty of, 373, 380; ii. 30, 409; capture of, i. 419
Farm, Farmer, origin of the words, i. 37, 104; ii. 164
Fealty, mode of swearing, i. 417, 418
Fee-farms, i. 106; ii. 259, 462
Feet, washing the, on entering a house, what it implied, i. 305; ii. 474
Felon, property of the, not confiscated, i. 436
Felton, ii. 4
Feorm, i. 37, 104; living at, 239, 314; ii. 159, 207, 473
Feorthling, a division of the denarius, ii. 345, *seq.*
Ferdingi, the, ii. 270
Fergus, Earl, i. 214
Fergus Mor MacEarca, a chieftain of the Irish Gael, i. 5
Fergus, the Pictish, his family, i. 20; termination of male line of his descendants, 22
Fergus of Galloway, i. 356
Ferncrosky, lands of, i. 401
Ferquhard, earl of Strathearn, i. 355
Ferquhard Mac-in-Sagart, first earl of Ross, i. 241, 339; ii. 23, 100; obtains knighthood for repressing a rebellion in the north, ii. 3, 4
Ferrers, Robert, i. 200, 372; earldom of Derbyshire conferred on, 207
Ferthyngman, the, i. 298
Festingmen, ii. 475
Fettercairn, assassination of Kenneth II. at, i. 88, 89
Feud, the, i. 285; defined, ii. 256, 454; long unknown to the Northmen, 302, 303, 461, 517, *seq.*
Feudal supremacy of England over Scotland, errors regarding, i. 69, 72, 91, 100, 145, 381 (see also ii. 384-429); subjection of Scotland under William, 373-396; Alexander III.'s answer to the bishop of Norwich, ii. 113, 424
Feudal system, theory of, i. 101; policy of Alexander I. as to, 172, 183, 185, 236; progress towards thorough feudalization under William, 436; in the 13th century, ii. 127, *seq.*
Fidach, son of Cruithne, i. 32
Fief-de-Hauberc, i. 287, 291; ii. 51, 262, 271, 510, 512, 517
Fiefs, Papal, i. 176
Fife, "kingdom of," i. 32, 39; earls of, 124, 184, 226, 427, 430; ii. 66
Fijo d'Algo; see Hidalgo
Fines, as penalties, i. 267. *See* Wergilds
Finella, daughter of Cunechat, i. 87, 126; her castle of Fettercairn, 88
Fingall, district of, i. 42, 162
Fingall (White Strangers), settlement of, in Ireland, i. 42, 348; contest with the Dugall for supremacy, i. 43. *See* Norsemen
Finlay Mac Rory, a Moray mormaor, his contest with Jarl Sigurd, i. 93; mentioned, 110, 120
Fir-Bolg, the, ii. 18, 226
Firmarii, farmers who were tenants from year to year, i. 288; ii. 157
"Firth kingdom, the," i. 97
Fitz-Alan, i. 184
Fitz-Alan, Richard, earl of Arundel, i. 184
Fiv, son of Cruithne, i. 32
Flahald (Fleald), i. 184, 317; ii. 484
Flame-bearer, the, a title applied to Ida, i. 3
Flamingi, the, i. 196
Flaiths, Gaelic, i. 34; ii. 248
Flanders, Tosti a refugee at the court of, i. 128; Edgar's flight thither, 136; Count of, 366, 372
Flandrenses, the, of Scottish charters, i. 196
Flemings, numerous, among original burghers, i. 309
Flet, the, in old Scottish law, ii. 267
Floravagr, battle of, i. 432
Florence, Count of Holland, i. 225, 355
Foclad, ii. 355, 362
Fodla, son of Cruithne, i. 32
Fogde; *see* Advocatus
Folk, the, i. 241, 245
Folkland, the king's Æthel, i. 273, 285; ii. 211, 258, 263
Folk-mote, the, i. 276, 277
Foray to the Tees, under Constantine II., i. 73
Fordun, John of, referred to, or quoted, i. 72, 87, 89, 117; ii. 120
Foreign shipping in Scotch ports, ii. 124
Foreign traders in burghs, regulations as to, i. 304, 305, 442
Forfar, burgh of, i. 443
Forfeiture, the full, in burgh, i. 302, 305, 306; crimes entailing, 436
Forres, burgh of, i. 443

Forteviot (Dunfothir, the ancient Pictish capital), council at, i. 41, 108, 232; burnt by the Norsemen, 51, 62
Forth, Firth of; *see* Scotswater
Forth, incursions of the Norse on the region bordering on the, i. 43
Fortreim, province of, i. 39, 53, 62
Fortreim, son of Cruithne, i. 32
Fortrev (Fotheriff), deanery of, i. 32, 255, 279
Fossard, William, i. 200
Fosterage, custom of, and its results, among the Celts, i. 34, 35
Fothadh, bishop of St. Andrews, i. 53, 174
Fourthing-men (Ferdingi), ii. 270
Frakarka, aunt of Harald of Orkney, i. 402, 405
Franc-Almoigne, lands held in, ii. 128, 323
Franc-alleu-noble, i. 285; what, ii. 255, 256, 452
Franc-alleu-roturier, ii. 255, 452
Franks, wergilds among the, i. 271; ii. 275
Frank-allodial proprietors under the emperor Charlemagne, i. 208, 273
Frasers, the, i. 443; ii. 83
Frederic II., of Germany, ii. 61
Frederic, abbot of St. Albans, ii. 509, 510
Free tenantry, the, ii. 155, *seq.*
Freehold right, the test of, i. 287; how a fixed title was acquired, 288, 289
Freehold tenure of land (*see* Allodial), i. 284, *seq.*
Freeholders, different classes of, i. 290, 291; laws regulating, 285-292; ii. 50; the sole "lawyers," ii. 134; the free proprietary the only "people" or community of the realm, 137, *seq.*
Free-quarters; *see* Feorm, Refection
Friesland, wergilds of, i. 268; ii. 276, 294
Frigivenman, the (Libertus), ii. 302, 322
Frisians, invasion of, i. 3
Frith-borh, the, ii. 334-340
Funeral rites, land left for the performance of, ii. 323
Furness, abbey of, i. 219, 221, 347, 352
Fyrdwite, ii. 272, 337, 517

GAEL, dresses of the, i. 150
Gaelic Church, constitution of, i. 325; monachism in, 324, *seq.*; introduction of diverse modes of celebrating the service, 330
Gafol-land, i. 237; ii. 165, 166. *See* Gavel tenure
Gafol-sweyn (common herdsman), ii. 159, 272
Gailin, meaning of, ii. 226, 355
Gall, Du (Black Strangers), i. 42; ii. 430
Gall, Fin (White Strangers), i. 42. *See* Fingall
Gallgael, the, of the Western Islands, i. 44, 56, 160, 350, 359; ii. 4, 371
Galloway, lord of, i. 355 (*see* Alan, Galloway, Roland); bishop of, ii. 27
Galloway, incursions of the Angles into, i. 18; population and language of, 21; a dependency of the Scottish kingdom, 235; timber procured from, by Magnus, for wooden forts, 166; mutiny among Galwegians in an invasion of England by David I., 198, 234, 356; code of laws, 283; submission of, to Malcolm IV., 356, 357; disturbance of, after William's capture, 379-382; Gilbert's invasion of the Lothians, 385; conclusion of the disturbances under Roland, an adherent of William, 387-390, 394; administration of justice in, 436, 437; burghs of, 442; disturbances on the death of Alan Fitz Roland, ii. 25-29
Galloway, Picts of, ii. 382
Galwalenses (Galweienses), the population of Galloway, i. 21, 290
Gamelin, bishop-elect of St. Andrews, and chancellor of Scotland, deprived of the chancellorship, ii. 66, 505; his appeal to Rome on the bishopric, 69; Henry's orders to arrest, 70; the Pope's response to his appeal, 72; his excommunication of Sir John de Dunmore and his advisers, 107
Gangr Rolf, founder of the Norman dynasty, i. 80; ii. 302, 303
Garioch, the, i. 76; earldom of, ii. 9
Garmoran, earldom of, i. 75
Gartnach, Earl, i. 184
Gasinds, Gesiths (followers), i. 27, 101; ii. 211, 212, 216, 217, 278, 327
Gastaldus, the deputy or Staller in Lombardy, ii. 278
Gaul, system of government in, before its subjugation by Rome, i. 24-26, 273, *seq.*; ii. 204, *seq.*; Celtic ancestry of the people of, ii. 220
Gauran, the clan, ii. 12
Gavel tenure, i. 237-243, 300, 438; ii. 262
Gavel-kind, origin of the word, ii. 266
Gebur, tenant of a Virgate, or quarter-holding, ii. 159, 161, 270

Gegildas, who, ii. 338
Gellatly, Henry, illegitimate son of William the Lion, i. 433
Gemeinred, i. 251; ii. 458. *See* Yeomanry.
Gemote, the Anglo-Saxon, i. 253
Genealogies, kings of the Picts, i. 20; ii. 185; kings of Dalriada, ii. 186, 190; Jarls of the Orkneys, 187; the Hy Ivar, 188; kings of Man, 188; lords of the Oirir-Gael, 189, 193
Geneat, i. 104; ii. 166; meaning of, ii. 264
"General Band," ii. 463
Generic, ii. 210, 211
"Gentilis homo," the gentleman, ii. 316
Geoffrey of Anjou, i. 195
Geoffrey, bishop of Durham, i. 216
Geoffrey, son of Henry II., i. 226, 396
Geoffry Fitz Peter, justiciary of England, i. 414
Geoffry de Marisco, ii. 38, 41, 417, 420
Geoffry de Langley, ii. 61
Gerefa; *see* Graf
Germans; ancient system of government amongst the, i. 27, 272, 273, 315; ii. 203; classes amongst, as described by Tacitus, ii. 206, *seq.*; Cæsar's account of, 207, 208; their threefold division of land after a conquest, 210 (*see* Thirds)
Germanus, bishop of Auxerre, i. 322, 331
Germanus, meaning attached to, by Strabo, ii. 197, 247; probable meaning of, 366, 367
Gesithcund right, how acquired, ii. 270, 271, 281, 320, 455
Gesithcundman (Anglo-Saxon noble), i. 35; ii. 136, 165, 252, *seq.*; replaced by Thegn, 282, 298, 319, 320, 455. *See* Gasinds
Gesith-socn, ii. 336, 457
Getyma, the warranter of a purchase, i. 261
Gewissi (West Saxons), ii. 214, 229
Giffard, Hugh, ii. 66
Giffard, William, ii. 42
Gigha, isle of, ii. 86
Gilbert de Hay, ii. 66, 76
Gilbert, earl of Strathearn, i. 336, 422
Gilbert the Mareschal, Earl of Pembroke, i. 435; ii. 26, 30, 31, 419
Gilbert of Galloway, i. 358, 371, 380, *seq.* *See* Galloway
Gilcomgain, i. 119, 120, 124
Gildas, i. 5, 17
Gilleanrias Ergemauche, i. 355
Gillebert, Bishop, i. 331
Gillecolum, son of Somarled, i. 359
Gillecolum (Gillecolm Mariscail?) of Galloway, i. 387, 388
Gillepatrick of Galloway, i. 387
Gillescop, the last of the race of Mac William, revolt under, ii. 20
Gillescop Mahohegan, ii. 20
Gillie, the Scottish, ii. 378
Gillie-wetfoot, the, i. 305
Gilroy, a leader of revolt in Galloway, ii. 26-28
Giraldus Cambrensis, i. 34, 36, 208, 433, 434; ii. 1, 385, 428
Glasgow, the burgh of, i. 309, 442; bishopric of, 181, 182, 211, 440; bishops of, 421; ii. 65, 76; cathedral of, ii. 170
Glaswir (blue men), the Welsh clergy so called, ii. 225
Glendochart, abbacy of, i. 236; ii. 16
Gloucester, Earls of, i. 189, 192, 200, 214, 372; ii. 63, 67
Godfrey Crovan, king of Man, i. 163; his conquest of Man, and capture of Dublin, 164, 349; his death in Isla, 165
Godfrey Mac Fergus, i. 56
Godfrey, son of Ivar, i. 56, *seq.*
Godfrey Olaveson, of Man, i. 348, 349; ii. 98
Godfrey Mac William, insurrection of, i. 425-427, 429, 430
Godfrey Don, ii. 100, 103
Godred Haraldson, of Man, i. 85
Godric, a lieutenant of Athelstan, i. 64
Godsib (Gossipred), parties related as, to each other, i. 146
Godwin, Earl, i. 122
Gold and silver plate at the Scottish court, i. 150
Gorm, first king of Denmark, i. 42
Gor-Ulad, meaning of, ii. 366
Goths, wergilds of the, ii. 279
Gourlay, Hugh and William, regents, ii. 66
Government, Celtic system of, *see* Celtic; policy of Malcolm II., 100-109, 236, 237
Gowrie, deanery of, i. 87; earldom of, 236, 254
"Grace of God," holding by the, import of the phrase, ii. 128
Graf, Gerefa, or Maor, office of, i. 27, 101, 105, 253, 298; ii. 212, *seq.*
Gragraba, a Norse Jarl, i. 57
Grampians, the, i. 52. *See* Bryn-Albyn, Drumalban, Mounth
Grange, the, attached to monasteries, ii. 164

Grants, royal, custom of confirming by charter, i. 186; preservation of, in writing, as *memoranda*, 249
Graphio (Comes), the Frankish, i. 102, 252, 274, 315; ii. 134, 290
Gravelines, i. 370, 372
Gray, Archbishop Walter, ii. 58
Gregory I. (the Great), i. 149, 178; ii. 331
Gregory II., Pope, i. 149; ii. 332
Gregory III., Pope, ii. 332
Gregory VII., Pope; *see* Hildebrand
Gregory IX., Pope, ii. 30
Gregory, bishop of Moray, i. 334
Grim or Græme (Kenneth III.), i. 92
Groat, the (the old English *scilling* of four pence), ii. 348
Gruoch, daughter of Boedhe, i. 110, 121
Gryth, sanctity of the, i. 258, 436; ii. 47, 439
Gualo, Cardinal, ii. 8
Guild, freedom of the, i. 301
Gulad (Gwlad, Gwladig, Guladach), i. 8, 34; meaning of, ii. 230, 247, 355, 366
Gulathing (law of Guley), ii. 283, 301
Gundobald, laws of, i. 274, 293
Gunhilda (wife of Eric Blodæxe) and her sons, their arrival in the Orkneys, i. 82
Gunhilda, wife of Kali, and mother of Rognwald the Saint, i. 402
Gutalag (law of Gothland), ii. 283, 301
Guthred, son of Hardicanute, i. 52; legend about, ii. 439
Guthrum, i. 64; ii. 165, 223, 395, 431
Guttorm, son of Sigurd, i. 47, 80
Guy (Count) de Dampierre, ii. 115
Gwrdha, Welsh proprietor, i. 256, 283; ii. 259
Gwrth Bryneich, the fortress of Bamborough, i. 3.
Gwyddel Ffichti, the, ii. 361, 374, 376
Gwynnedd (North Wales), i. 29; ii. 336

H, THE LETTER, "the Shibboleth of the north," ii. 238, 239
Haberdasher, the (man with a *havresac*), i. 304; ii. 474
Haco, king of Norway, expedition of, i. 90; ii. 85, *seq.*; negotiations of the Alexanders regarding the Western Isles, ii. 43, 44, 83; his challenge to Alexander III., 89; the battle of Largs, 91-94; his departure after the contest, 95; his death in Orkney, 96
Hacon, son of Paul, earl of Orkney, i. 400, *seq.*
Haddington, stormed by John of England, ii. 5
Hadrian, Emperor, i. 1
Hafursfiord, battle of, i. 45
Hakon of Norway, i. 65, 82, 85
Halfdan, a Norse chieftain, i. 43, 46, 47, 57, 81, 143; ii. 430
Halfling, the, a division of the denarius, ii. 345, *seq.*
Halkelson, John, of Orkney, i. 432
Hallad, son of Rognwald, i. 80
Halsfang, meaning of, ii. 288, 313
Hamehald, the, i. 261, 262
"Handfast" marriages, ii. 98
Hangman, office of, i. 282; ii. 212
Hans, Hant-gemahl, i. 298, 309; meaning of, ii. 318
Hanse, the, an association of four burghs, i. 297, 298
Hanseatic burghs of Germany, i. 298, 299
Harald I., king of Man, ii. 101
Harald Ericson, i. 410-412
Harald Hardrade, expedition of, in conjunction with Tosti, against England, i. 129
Harald Godfreyson, of Man, i. 346; his sons, 348
Harald the Eloquent, joint earl of Orkney with Paul the Silent, i. 401, 402
Harald Mac Madach, earl of Orkney and of Caithness, i. 405, *seq.*; his rebellion against William the Lion, 409, and its consequences, 410-413; his death, 432
Harbottle, castle of, i. 366
Harold, son of Canute, i. 114, 119
Harold, the last Anglo-Saxon king of England, i. 130, 154
Hardicanute, i. 52, 63
Harfager, Harald, first king of Norway, i. 42, 45, 56, 65, 81; ii. 299
Hastings, William the Conqueror's victory at, i. 129
Havard, son of Thorfin, i. 83
Hay, the clan, i. 208, 272
Hearth, the, by Gavel-kind the youngest son succeeded to, ii. 266
Heathored, last bishop of Whithern, i. 21
Hebrides, the, i. 44, 56, 74; population of, 160; attack of Magnus, 165; expedition of Haco, ii. 85, *seq.* *See* Isles
Hecatæus, i. 1
Heinrek Haraldson, i. 432
Heimskringla, the Norwegian, i. 46, 65, 95
Helen of Galloway, wife of Roger de Quinci, ii. 25

Helena de Moreville, i. 387
Helga, mother of Harald the Eloquent, of Orkney, i. 402
Henry I. of England, i. 151-153, 155; his daughter Alicia, 188; his death, 191; his law as to wergilds, ii. 282, 307; laws of, 146, 506-523
Henry II. of England (Fitz Empress), i. 218, 219, 224, 345; character of, 351; war with Scotland, 363, *seq.* (*see* William the Lion); death of, 395
Henry, eldest son of the preceding, coronation of, i. 363; flight to France, 364
Henry III. of England, i. 429, 435; ii. 14; his pretensions against the kingdom of Scotland; council of York, ii. 29-32; his relations with Alexander II., 46; expenses of his projected crusade, 56; his French campaigns, 62; his claim over the Scottish regency, 67; policy towards Scotland, 68-76, 422; remarks on his character, 78; his barons, 106
Henry V. of Germany, i. 188
Henry VI. of Germany, i. 397, 399
Henry Beauclerc, i. 119
Henry, bishop of Winchester, brother of Stephen, i. 215, 351
Henry de Hastings, ii. 10
Henry, Prince (son of David I. of Scotland), his birth, i. 188; his English fiefs, 193, 213, 397; a guest at the court of Stephen, and offence of the English barons, 194; joins his father against Stephen, 195, 202, 205, 209; earldom of Northumberland conferred, 213; marriage with Ada de Warenne, 214; his death, 225; his family, 225, 226
Herbary, i. 251, 305, 437
Here, the, ii. 430, *seq.*
Hereban, levy of, i. 280
Hereford, bishop of, i. 363; earl of, 417; ii. 75
Heregeat (war-loan), ii. 212, 233. *See* Heriot
Heregeld; *see* Danegeld
Herenach, the lay tenant of monastery lands, i. 329, 339
Heretoga, name of an early German office in the state, i. 25, 32, 315; ii. 213
Hereward, i. 135
Heriot, exaction of, i. 300; ii. 129; original meaning of, ii. 212, 233; distinguished from Relief, 459. *See* Heregeat
Heritors' court, ii. 135
Hersirs, Scandinavian, i. 239; ii. 299, 462
Heryn, castle of, i. 388
Heth, earl of Moray, i. 173, 184, 190
Hexham, see of, i. 12; priors of (John and Richard), 194, *seq.*; unauthorised foray on the priory of, 211
Hextilda, grand-daughter of Donald Bane, i. 217; ii. 192
Hidalgo (Fijo d'Algo), i. 256; ii. 279, 310, 321
Hildebrand (Gregory VII.), i. 149, 174, *seq.*
Hirdmen, i. 273, 295; ii. 234, 290
Hird, the Celtic and Teutonic (familia), i. 250, 273, 313, 316; ii. 276, 311, 336, 456
Hlaford-socn (Commendation), i. 257, 295; ii. 215, 298, 323, 438, 458; unknown in Scandinavia, ii. 460
Holders, Norwegian, i. 80; ii. 300. *See* Allodial tenure
Holdings, various, ii. 256; subdivisions of, 270-272
Holmcultram, ii. 6
Holinshed's Chronicle, i. 119
Holy Sepulchre, i. 396
Holyrood, monastery of, i. 231, 357; ii. 20
Homage, liege and simple, i. 137, 354; different kinds of, ii. 405-407
Homicide, punishment of, i. 264, 268, 436, 440. *See* Wergild
Honor of Huntingdon, i. 187, 193, 225, 352, 353, 386, 425; ii. 8, 71, 417
Honor of Lancaster, i. 352
Honor of Skipton, i. 222
Honor, the, in the language of imperial feudalism, i. 193; ii. 411-413
Honorius II., Pope, i. 210
Honorius III., Pope, ii. 10, 106
Horses, attention paid to the breeding of, ii. 123, 126; the number to be kept by the dignified clergy and greater barons, limited, 124
Horswealh, the Anglo-Saxon, i. 313
Horton, William, his embassy to the Scottish regents, ii. 80, *seq.*
Hospes, Hoste, meaning of, ii. 255, 256
Hospital, of the burgh, i. 305; of the Culdee monastery, 333, 338
Hospitality of early times, i. 305, 306; ii. 472, *seq.*
Hospitallers, i. 340, 342; ii. 472, *seq.*
"Hosting across the frontier," i. 208, 244
Hosting, Frank tenantry of Church lands, i. 279, 281
Houseman, the Norwegian, ii. 437, 438
Hoveden, Roger, chaplain of Henry II., i. 380

Howel Dha, laws of, i. 29, 31, 108, 312; ii. 267, 303
Hubert, archbishop of Canterbury, i. 399, 414
Hubert de Burgh, married to the Princess Margaret, daughter of William the Lion, i. 399, 423, 435; ii. 11, 78; ruler of England during the minority of Henry III., ii. 14, 180, 418; fall of, 25
Hugh, confessor of William the Lion, his election to the see of St. Andrews, i. 382-384
Hugh de Berkeley, ii. 76
Hugh de Lacy, ii. 27
Hugh de Lusignan (Count de la Marche), ii. 11
Hugh, earl of Shrewsbury, i. 167
Hugo Bardolf, i. 398
Humphrey de Bohun, earl of Hereford, i. 226, 364, 365
Hundi (Crinan ?), contest of, with Sigurd Lodverson, for Caithness, i. 85
Hundi Sigurdson, i. 86
Hundred, institution of the, i. 103, 256, 260, 261; ii. 334-338; unknown beyond the Tees, ii. 339, 439; subdivision of, i. 303, 304
Huntingdon, Honor of, conferred on Earl David (I. of Scotland), i. 187; his son, Prince Henry, 193; his grandson David (*see* David, earl of Huntingdon); on Alexander II., ii. 8; on Alexander III., 71
Husbandland, the, or quarter-holding, i. 291; ii. 47, 137, 158, 161, 271
Husbandman, the, lowest of the farming class, i. 104; ii. 158, 167
Hus-Carles, i. 314
Hydage, ii. 517
Hyde, i. 208; ii. 165, 232, 521. *See* Mansio
Hy Ivar, the, i. 42, 52, 55, *seq.*, 161, 349; ii. 396, *seq.*; genealogy of, ii. 188
Hy Nial, family of the, i. 6, 7, 48; divisions of, into northern and southern branches, and these again into clans, 6, 29, 30, 36; head of, 122; defeat of Murketagh O'Brien by the, 168; their power first broken by the Northmen, ii. 353
Hyperboreans, of Hecatæus, i. 1
Hy Tuirtre, the, ii. 364

Iberians, ii. 218, 222, *seq.*
Iceland, colonization of, illustrative of the early state of society in the north, ii. 203
Ida, reputed founder of the Northumbrian kingdom, i. 3, 4, 128; ii. 230
Ilbert de Lacy, i. 200
Inauguration of Celtic kings, i. 35, 36
Incas of Peru, ii. 199
Inch Affray, monastery of, i. 336
Inch Gall, dominion of, i. 56
Inch Mahomoc, monastery of, i. 336
Inchcolm, prior of, i. 415
Indulf, son of Constantine II., reign of, i. 75, 76, 95, 126, 127
Infangthief, i. 52, 285; ii. 135, 439
Inge, king of Sweden, i. 168; ii. 98
Ingebiorge, wife successively of Thorfin Sigurdson and of Malcolm Ceanmore, i. 127, 135
Ingelram, archdeacon, afterwards bishop of Glasgow, i. 378
Ingelram de Couci, the family of, ii. 33
Ingemund, regent of Man, i. 346
Ingenui, the German class of (free-born), and its subdivisions, ii. 206, 212, 214
Ingigerda, daughter of Rognwald the Saint, i. 411
Ini, Wessex under, i. 35, 253; ii. 280, 297
Innes charter, i. 359
Innocent II., Pope, i. 210
Innocent III., Pope, i. 177, 419
Innocent IV., Pope, ii. 62, 76
Inquisition at Werk, ii. 428, 429
"Interpreter, the," ii. 380, 381
Interest, rate of, in the 13th century, ii. 115
Intermarriage among the different branches of the baronage, and its effects, ii. 141, 169
Inundation at Perth, i. 426
Invercullen, descent of Norsemen at, i. 76
Invergowrie, Alexander I.'s court at, i. 100, 172, 233
Inverness, William at, i. 392; peculiar privileges of the burgh of, 443; Alexander II. with his army at, ii. 14; celebrated for shipbuilding, 173
Inware and Utware, i. 208
Iona, island of, granted to Columba, i. 6, 7; the leading monastery of the north, 9, 333; clergy of, expelled from the Pictish territories, 9, 10; ravaged by the Vikings, 22, 40; the retreat of Olave Sitricson, 74; its sacredness respected by Magnus, 166
Ireland, ancient divisions of, i. 29; incursions of the Vikings, 42; the Hy Ivar in, 57, 59, 60, 65, 74; invasion of Magnus Olaveson, 168
Ireland, early, ii. 353-365

Irish Church, i. 321-332, *passim*
Irish Norsemen, i. 161, 164, 348, 349
Isabella, illegitimate daughter of William, i. 433
Isabella, Princess, daughter of William, i. 422, 435
Isla, isle of, i. 165
Isla, the river, i. 86, 87
Isles, kingdom of the, i. 161-169, 345-350. *See* Hebrides, Orkney, Man, Western Islands
Italy, the merchants of, i. 442
Ivar, a Norse chieftain, i. 43, 44, 46
Ivar hy Ivar, grandson of the preceding, i. 53, 56, *seq.*
Ivar, Reginald hy, i. 52, 56, *seq.*
Ivo, abbot of Furness, i. 219

JAPAN, a similar feature in its government to a peculiarity of the old Celtic system, i. 28
Jarl, royal, office of the, i. 105, 253
Jazyges, same as Czeks, ii. 237
Jedburgh, monastery of, i. 231; castle of, i. 373; conference at, between Alexander III. and the envoys of Henry, ii. 75; festivities at Alexander's second marriage—the masque—the skeleton-form of death, 117, 118
"Jeddart justice," i. 271
Jedwood Forest, i. 146
Jehmare, i. 97
Joanna of Ponthieu, ii. 25
Joanna, natural daughter of King John, i. 430
Joanna, Princess, of England, ii. 10; married to Alexander II., 11; her death, 32
Jocelyn, bishop of Glasgow, i. 378; ii. 171
John XIX., Pope, i. 175
John de Blund, ii. 66
John de Brienne, ii. 71, 76
John de Couci, ii. 39
John de Courcy, ii. 99
John (Sir) de Dundemor, ii. 66, 107
John (de Ergadia) of Lorn, ii. 194
John de Strathbogie, ii. 193
John, prior of Hexham, i. 194, *seq.*, 278
John Haraldson, earl of Caithness, and of Orkney, i. 432
John, tutor of Earl David, and afterwards bishop of Glasgow, i. 181, 182, 211, 377, 404
John, earl of Caithness, ii. 18
John of Crema, i. 377
John, son of Henry II. of England, i. 395, 397; anticipated contest for the crown with his nephew Arthur, 414; his evasive policy as to William's English fiefs, 415; the interdict of Innocent III., 419; threatens to invade Scotland on account of William destroying Tweedmouth Castle, 420; appeased by William, 422, 423; conference with William at Durham and Norham, 429; revolt in Wales, and discontent in England, 430, 431; John again in the north, wishing a conference with William, 431; invasion of Scotland, in the reign of Alexander II., ii. 4-8; his death, 7
John "the Scot," Earl of Chester, Lincoln, and Huntingdon, ii. 9, 13; poisoned by his wife, 32
Joleta (de Dreux), marriage of Alexander III. to, ii. 117, 122
Jordan de Bussy, defender of Werk Castle, i. 195, 199, 212
Jubilee, Mosaic, theory of, ii. 234, 258
Judgment by peers, i. 276, 299
Judicial regulations; *see* Justice
"Jugement del Pais," the, i. 272, 275, 276, 280-282
Junior, the, ii. 311. *See* Kin
Jury, trial by, i. 275, 277; ii. 134
Jus hæreditatis, ii. 313
Justice, courts of, in David's reign, i. 228; administration of, 257-284; in William's reign, 436-444; in Alexander II.'s reign, ii. 46-52; in that of Alexander III., 123, 130, *seq.*
Justiciary, grand, office of, i. 315, 317; ii. 123, 133
Jutes, i. 3

KALI, a follower of Magnus Barefoot, i. 402
Kali Hundison, i. 116; ii. 477-479
Kane; *see* Can
Kari, Solmundason, i. 85
Kells, monastery at, i. 22
Kelso, monastery of, i. 231; prior of, 378; conference on the regency during Alexander III.'s minority, in the church of, ii. 65
Kennedy, Henry, of Galloway, i. 387
Kenneth Mac Alpin, genealogy of, i. 20; accession of, 23; extent of his kingdom, 39; events of his reign, 40, 41, 54; extinction of the male line of, 98, 110
Kenneth II., i. 79-91, 125; ravages in Cumberland, 79; assassinated at Fettercairn, 89
Kenneth III., i. 92

Kenneth Mac Duff, i. 89, 91, 184, 190, 394
Kenneth Mac Heth, i. 360, 361; ii. 3
Kent, earl of, i. 423; ii. 25; countess of, ii. 78
Kentish Gavel, i. 104, 243, 287; ii. 166, 265, 266; allodial tenure, ii. 264
Kerrara, islet of, death of Alexander II. on, ii. 45, 85
Kerval, an Irish king, i. 84, 94
Ketil; *see* Caittil
Kildey, a name used as an equivalent for a hospital, i. 340
Kilrimont (St. Andrews), the Culdees of, i. 337-340, 342, 344. *See* St. Andrews
Kin, the, ii. 309-340
Kindred, degrees of, ii. 309, *seq.*
King's Thegn, the, its meaning, ii. 456
Kingdom of Scotland, its extent under Kenneth, i. 39; inroads of the Northmen, 42, *seq.*, 55; cession of the north, 47; its results, 49, 52; annexation of Strath Clyde, 54, 55; incursion of Athelstan, 61, 62; summary of progress under Constantine II., 68; Cumberland made over to, by Edmund of England, 72, but afterwards withdrawn, 76; capture of Edinburgh, 76; events in Caithness, 84, 85; annexation of Angus, 87; invasion of Northumbria, 92, 93; annexation of Lothian, 95; extension and consolidation under Malcolm II., 98; contested in subsequent reigns, 110-124; settlement of Saxon refugees in, 134, 156; close of the Gaelic period under Malcolm III., 125-153; confusion in the kingdom at Malcolm's death, 154-156; assimilation to feudal monarchies under Alexander I., 183, 185, 186; extent of the authority of David I., 222; rise of southern Scotland, 232, 233; submission of Galloway to Malcolm IV., 356, 357; vicissitudes under William the Lion, 364-369, 394-396; re-construction of Argyle under Alexander II., ii. 16-18, 21, 22; revolt in Galloway, 25-29; submission of the kingdom of the Isles to Alexander III., 97-106; prosperity under the Alexanders, 172-181; the English claims, 384-429
Kinghorn, fatal ride of Alexander III. to, ii. 119, 120
Kinsi, Archbishop of York, ii. 385
Kintyre, family of, i. 24, 40, 87; ii. 12
Kintyre, principality of, i. 5; ii. 12
Kippen, church of, i. 336
Kirkheugh, monastery of, i. 344
Kirkinnis, lands of, i. 279; the Culdees of, 280
Kirkwall, cathedral church at, dedicated to St. Magnus, i. 403
Knabe; *see* Cnicht
Knæ (degree of relationship), ii. 315, 321
Knight-service, i. 241, 244, 290; lands held by, ii. 128
Kolbein, an attendant of Haco, ii. 89
Kyle, i. 18, 356

LADMAN, i. 173
Læn, the, ii. 256, *seq.*, 264, 511
Læt, meaning of, ii, 206, 232
Læts, Teutonic, i. 245, 273, 275, 293; ii. 206, 232, *seq.*
Lagaman, German = Celtic Vergobreith, i. 27, 273
Lagman, son of Godfrey Crovan, i. 166, 346, 347
Lairds, Scottish, i. 290-292
Laisren, abbot of Lethglin, i. 331
Laistranus, an abbot, i. 331
Lama, the, of Thibet, ii. 199
Lamond (Lagman), clan, ii. 18, 102
Lan-amain, meaning of, ii. 328
Lancaster, i. 218; Honor of, 352, 397
Land, tenure of, among the Gauls, Welsh, etc., and the various officials connected therewith, i. 24-37, 100-107. *See* Tenure
Land, value of, in the 13th century, ii. 115
Land-agende men, i. 310; ii. 274, 282, 323, 324, 459
Landrica (overlord), ii. 274, 324
Lanfranc, Archbishop, ii. 54, 510
Language, influence of burgher population on, i. 310; the three languages spoken in Scotland, ii. 143
Langue d'oc, and *Langue d'ouil*, ii. 246
Largs, battle of, ii. 91-94; chivalry at, 124
Latham, Dr., his theory of the extinction of the old Saxon speech, ii. 242
Laws of Henry I., ii. 146, 506, *seq.*
Law, different systems of, i. 272-276; courts of, in Scotland, ii. 130, *seq.*; the basis of Scottish law, i. 96, 102, 235; growth and development of a system of, ii. 134. *See* Justice
Lawrence, chaplain of Harald Mac Madach, i. 412
Leges inter Scottos et Brettos, ii. 260, *seq.*, 285, 351
Leicester, earl of, i. 365

Lendermen, Norse, i. 105, 112, 253; ii. 460
Lenery, isle of, ii. 125
Lennox (Levenach, Levenani), district of the, i. 18, 202, 203; harried by the Islesmen, ii. 90, 97; earldom of, 9, 495, 496; ancient extent of, 231, 372
Lent, the days of, i. 149
Leo IX., Pope, i. 175, 176
Leprosy, laws regarding, i. 305
Leth Cuin, and Leth Mogh, north and south of Ireland, i. 29, 37; ii. 227, 355, 360
Leudes (Leod, Leute, "people"), i. 241, 244; ii. 136, 210, 214, 215; not to be confounded with Antrustions, 290
Leudisamium, what, ii. 214, 396
Levenach; *see* Lennox
Lewis, island of, ii. 85, 99
"Lex Clan MacDuff," i. 255; ii. 315, 493
Leysing, or freedman, ii. 165, 281
Libertus; *see* Frigivenman
Liddel, castle of, i. 366
Lincoln, battle of, i. 215; bishop of, 366; town of, stormed, ii. 6, 7
Lindisfarne, see of, i. 12, 324; ravaged by the Vikings, 22, 40
Lindores, abbey of, founded by David earl of Huntingdon, ii. 9
Lindsay, i. 184
Lindsay, David, i. 422; ii. 42, 66, 76
Lin Garan, lake of, i. 12. *See* Nectan's Mere
Lingard, Dr., referred to, i. 63; ii. 11, 414, 417, 421
Linne, Loch, i. 5, 15
Lion rampant, the device of the, i. 435
Liotr, earl of Orkney, attacked by his brother Skuli, i. 83; subdues all Caithness, 84
Lismore, diocese of, ii. 12, 17
Litimonium, what, ii. 214
Litsmen, ii. 460, 506
Llewellyn of Wales, revolt of, i. 430; ii. 32
Lloegrians (Britons of the south), ii. 214, 229
Loaf-giver, the, and loaf-eater, ii. 207
Lochlan, royal race of, i. 42
Lochleven, Culdee society of, i. 121
Lochloy, port of, i. 410, 426
Lod, the, Teutonic name for weight, ii. 343, *seq.*
Lodbroc, Ragnar, i. 40, 43, 56, 66, 165
Lodver, son of Thorfin, and Earl of Orkney, i. 84
Lombards, wergilds of the, ii. 278
Lombardy, merchants of, their commercial relations with Scotland in the 13th century, ii. 125, 126
Lomond, Loch, i. 203; ii. 90
Loncarty, battle of, i. 90, 117
London-burh, the men of, i. 270, 295
London-wic, i. 294
Long, Loch, Haco's squadron in, ii. 90, 94
Lorn, principality of, i. 5; ii. 12; house of, i. 15; lordship of, ii. 16, 23, 194, 195
Lothian, Anglian population of, i. 4; annexation of, to the Scottish kingdom, under Malcolm II., 95, 96, 235; attacked by Henry II., 365; fabrication of the English Chroniclers about, ii. 390-392, 426-429
Louis of France, i. 363, 366, 372; ii. 6, 25
Low Countries, mercenaries from the, i. 366
Lucius, Pope, i. 387
Lucullus, i. 3
Ludlow Castle, siege of, i. 214
Lulach, son of Gilcomgain, i. 110, 111; reign of, 124
Lumphanan, scene of Macbeth's death, i. 123
Lupus, bishop of Troyes, i. 322, 331

MABUCHELLWR, the noble in North Wales, ii. 284
Mac Alisters, the, ii. 196
Mac Alpin dynasty, i. 23
Mac Arthurs, the, ii. 18
Macbeth, mormaor of Moray, i. 97, 111, 113; his descent, 119; his character, 120, 121; becomes king of Scotland, 123; his defeat and death, 123, 124, 139
Maccus Archipirata; *see* Magnus Haraldson
Mac Deriloi, Nectan, king of the Picts, i. 9; abdication of, 13
Mac Donells, the, of Glengarry, ii. 196
Macduff, earl of Fife of the fabulists, a myth, i. 124
Mac Erchar, clan of, ii. 18, 102
Mac Fergus, Angus, ascendency of, i. 13
Machine described by Boece, by which Kenneth II. lost his life, i. 89
Mac-in-Sagart; *see* Ferquhard
Mac Kerval, Dermot, i. 6
Mac Lachlans, the, ii. 18
Mac Loughlin, the Irish, ii. 98
Mac Maras of Man, i. 166, 349; ii. 104

Mac Naughton, Alexander, ii. 196
Macphersons, the, i. 241, 272
Mac William, the insurrection under, i. 384, 385, 391, 394; his son Godfrey, 425
Madach, earl of Atholl, i. 184, 402, 404; ii. 192
Madach (Moddan), appointed by Duncan I. to the earldom of Sutherland and Caithness, i. 114; his unsuccessful contest with Thorfin, 114-116
Mæata, a so-called British province, i. 3
Mæatæ, a division of the Picts, i. 30
Mæg, the, i. 237; ii. 310, *seq.*
Mæg-borh, the, i. 237; ii. 311, *seq.*
Mægth-man, ii. 325
Mælbeth, i. 97
Maenawl, Maenol, i. 253; meaning of, ii. 213, 259, 462
Maer, a Welsh royal official, i. 29, 31. 103
Mærne, the men of, i. 75, 100, 172; a mormaor of, 100, 158
Magi, Babylonian, ii. 201
Magistracy of burghs, i. 298, 303
Magistrates, supreme, in Celtic system of government, i. 24, *seq.*
Magna Charta, the, i. 306; ii. 2, 166, 176
Magnus (Barefoot) Olaveson, his expedition against the Isles, i. 165-167, 345, 347, 400; ii. 43, 104; slain in Ireland, i. 169, 400
Magnus Erlendson (the martyr), i. 400, *seq.*
Magnus Haraldson, i. 66, 74, 85, 161
Magnus Olaveson, king of Man, ii. 86, 103, 166
Magyars, the, ii. 249
Maineté, custom of, ii. 267, *seq.*; to what traceable, 268, 269
Mair, "Mair of fee," ii. 468. *See* Maor
Maire du Palais, office of, i. 313, 315
Majores Barones, the, i. 276, 277; ii. 492
Makamal (Campbell?) ii. 84
Malbride Mac Rory, oirrigh of Moray, i. 120; his contest with Liotr, earl of Orkney, 84
Malcolm, "Earl," nephew of Finlay Mac Rory, i. 85, 110, 120
Malcolm, earl of Fife, i. 427, 430
Malcolm Mac Duff, i. 89, 110
Malcolm Mac Heth, i. 189-191, 219, 221, 345, 350, 351, 359, 391, 394, 409
Malcolm of Galloway, i. 380
Malcolm of Mar, i. 427
Malcolm I., his alliance with Edmund of England, i. 72; his death, 75
Malcolm II., reign of, i. 92-109, 312; invasion of Northumbria, and defeat, 92; second and successful attack, and its results, 95, 96; assassination of, 98
Malcolm III. (Ceanmore), i. 69, 125; early years of his reign, 127-131; his seizure of Cumberland, and invasion of Yorkshire, 131, 132, and Northumberland, 133; his marriage with Margaret, sister of Edgar the Atheling, 135; his victories in the north, 139; again crosses his southern frontiers, 140; another incursion on the south, 141; negotiations with Rufus, 143; ii. 401, 481; visit to the English court, i. 144; views of English authorities on the treatment he received, 145; heads an army to avenge the insult, and meets his death on the Alne, 145, 146, 154; his character, 147, 148; account of his Queen, Margaret, and their family, 148-153, 158, 159, 171
Malcolm IV., son of Prince Henry, i. 225; last attempt of the Moray family upon the Crown, 345, 350, 351; the conspiracy of Perth, 354, 355; knighted at Tours, 354; conquest of Galloway, 356-358; the defeat of Somarled, 359; his soubriquet of "the Maiden," 360; policy attributed to, 360, 361
Malebise, Hugo, i. 415
Malise, earl of Strathearn, i. 184, 202, 355; ii. 194
Mall, the, among the early Germans, i. 273
Malls, Gallic, i. 273, 284; ii. 203
Malmesbury referred to, i. 12, 60, 61, 142, 147, 153; interpolated, ii. 389, 390
Malpeter Mac Loen, i. 158
Malsnechtan, a Scottish noble, slain in a contest with Sigurd Lodverson, i. 85
Malsnechtan, son of Lulach, i. 139, 155
Man, Isle of, i. 56, 160; Norse engagement near, 57; oirrighs or underkings of, 66; rule of Magnus Haraldson, 74; original clans of the north, 164, 349; conquered by Godfrey Crovan, 163, 164; Lagman's rule, 166, 346; attacked by Magnus Olaveson, 166; battle between the northern and southern clans near Sandwirth, 166, 349; dominion of Sigurd Magnusson, 168, 346; Lagman restored, 346; reign of Olave, 347, 348; contest between Godfrey Olave-

son and Thorfin Ottirson, and its results, 349, 350; partition of the islands, 350; reign of Godfrey II. (Olaveson), ii. 98; reign of Ronald I. (Godfreyson), 99, *seq.*; Olave II. (Godfreyson), 98-101; reigns of Harald I., Godfrey, Ronald II., and Magnus, sons of Olave II., 102, 103; Magnus joins Haco's expedition, 85; submission of Man to Alexander III. of Scotland, 103, 104; kings of, 188
Manan, Manau, i. 8; situation of, ii. 372
Manbote, what, ii. 288, 302
Mancipia, or stock, ii. 263
Manred, bonds of, i. 251; ii. 340, 458
Manrent; *see* Manred
Mansio, i. 208; what, ii. 232; "mansionem præparare," 473
Mansuarius, definition of, ii. 232
Manwyrth, ii. 280, 288, 289. *See* Wergild
Maor, office of the, i. 102, 105, 106, 253
Mar, earldom of, i. 75, 236; earls of, 342; ii. 60, 76
Marcellinus, i. 2
March, earl of, i. 184
Marche, Count de la, ii. 33
Mareschal, office of, i. 313, 315, 317; ii. 137
Margaret, countess of Atholl, i. 402, 404, 406
Margaret, daughter of Alexander III., ii. 83, 114; her marriage, 115, and death, 116
Margaret, daughter of Prince Henry, i. 225
Margaret, illegitimate daughter of William, i. 433
Margaret of Flanders, daughter-in-law of Alexander III., ii. 115
Margaret of Huntingdon, ii. 9, 25
Margaret, Princess, daughter of Henry III. of England, married to Alexander III. of Scotland, ii. 57, *seq.*; practical joke of, 114; her death, 114
Margaret, Princess, daughter of William, i. 422, 435
Margaret, sister of Edgar, and wife of Malcolm Ceanmore, i. 135, 145, 148-151, 416; her influence at her husband's court, 156, 433; her innovations in ecclesiastical matters, 148, 149, 185
Margaret, the maid of Norway, granddaughter of Alexander III., ii. 117
Marianus the historian, i. 116, 120, 134
Maritage, a source of the royal revenue, ii. 129
Marjory, countess of Carrick, ii. 108, 109
Marjory, Princess, daughter of William, i. 435; ii. 24, 31
Mark (weight), meaning of, ii. 343, 350
Marlborough, i. 391
Marmaordom; *see* Mormaordom
Marriage, law of, ii. 324, *seq.*
Mary, daughter of Malcolm III., i. 153
Mary de Couci, married to Alexander II., ii. 33; her dowry, 58; Henry's distrust of, 71, 76
Matilda, daughter of Prince Henry, i. 226
Matilda, daughter of Malcolm III., and queen of England, i. 153; her daughter Matilda, 154. *See* Maud
Matilda de Cantilupe, ii. 60
Matilda, empress of Germany, daughter of Henry I. of England. *See* Alicia
Matilda of Saxony, i. 386, 388
Matilda, queen of David I., i. 187
Matilda, queen of Stephen, i. 193, 213
Matthew, bishop of Aberdeen, i. 382
Matthew of Westminster, i. 353
Mauclerk, ii. 2
Maud, "the good Queen," i. 151-153; ii. 411. *See* Editha
Maunsel, John, provost of Beverley, ii. 57, 63, 67, 70, 74
May, prior of, i. 415
"Mayster men," i. 355
Medume Leodgild, meaning of, ii. 280
Meliores Pagenses, "the gentry," i. 274, 276, 311; ii. 154, 270, 318
Melrose; monastery of, i. 231; abbot of, 383; ii. 27, 72; Alexander II. buried at, ii. 52; Alexander III.'s conference with the English barons at, 75
Melville, joint-justiciary of Scotland, ii. 37, 50
Membra Loricæ, ii. 262. *See* Fief-de-hauberc
Memorandum, fabricated, of Alexander III.'s homage, ii. 425
Menteith, earldom of, i. 236, 255, 336; the earldom divided, ii. 79; earl of, 16, 21, 35, 53, 55, 64, 72-74, 76, 79
Merchet, exaction of, i. 107, 300; ii. 129; origin of, ii. 307, 328
Mercia, i. 16, 267, 318
Mercury-worship, ii. 249
Merlesweyne, an adherent of Edgar the Atheling, i. 133
Merns, deanery of the, i. 87, 236
Merovic, race of, i. 273
Merovingian sovereigns, i. 240
Meschines, William, i. 223
Mesne lords, i. 103

"Messuage, the capital," i. 300
Metropolitans, English, Alexander's contest with, i. 174-182, 376
Metsunge-men, ii. 207
Miles, the early, i. 288; ii. 136, 292, 494
Military and judicial functions, separation of, in Celtic government, i. 24, *seq.*, 38; ii. 204, *seq.* *See* Separation
Military service, i. 208, 244; ii. 263
Minores Barones, the, i. 276, 277
Miracles, credulity as to, i. 371, 372, 413
Mireforth (Firth of Forth?), ii. 390
Misplacement of events in history, i. 38, 39
Missus, the, fiscal judge among the Franks, i. 274
Mitford Castle, ii. 5, 7
Moddan; *see* Madach
Mogh, ii. 378
Monachism, i. 324, *seq.*
Monaghvaird, in Strathearn, i. 92
Monasteries, erection of, coincident with the subjugation of a province, i. 21, 88; hereditary offices in, 88; Gaelic, 324; lands conferred on, 328
Money, ancient, ii. 343, *seq.*
Monks, British and Irish, i. 331
Montague, priory of, i. 159
Montealt, joint-justiciary of Scotland, ii. 37, 50
Montrose, castle of, i. 290
Monymusk, the Culdees of, i. 100, 342
Moot, the royal, i. 257; regulations about, 439; moots amongst the Gael, 277; ii. 135
Moot-Hill of Scone, i. 53, 106, 108, 278
Moravia, defined, i. 236
Moray Firth, i. 116, 173
Moray, province of, i. 52, 75, 443; the men of, 100, 172, 190, 360, 394; Malcolm IV.'s policy in, 359; revolt under Mac William, 391; seized by Harald Mac Madach, 409; revolt under Godfrey Mac William, 425-427, 429, 430
Moray, see of, i. 334, 335, 440; family of, 110, 118-124, 139, 140, 155, 345, 351; earl of, 184; forfeiture of the earldom, 191
Morel of Bamborough, i. 146
Moreville, Baron, i. 184, 214, 317; ii. 141
Morgen-gifa, the, ii. 325; defined, 327
Morkar, chosen earl of Yorkshire and Northumberland, i. 128; his rebellion, in conjunction with Edwin, Earl of Mercia, and others, against the Conqueror, 135
Mormaordom, i. 278; ii. 469
Mormaors, northern, i. 75, 83, 87, 171-173, 184, 190, 318; office of, described, 104, 105, 237; ii. 467
Morpeth, ii. 5
Mortancestrie and Novel Disseisin, law about, i. 283, 284; ii. 522
Mortimer, Hugo, i. 351
Mortlach, foundation of, i. 99, 139
Mounth, the (Grampian range), i. 46, 117, 236; ii. 37, 123, 133
Mousa, fort of, in Shetland, i. 406
Muimeam (Munster), i. 29; meaning of, ii. 357
Mund, the, ii. 311, *seq.*
Mundborh; *see* Patronage
Municipal institutions, i. 235-320, 435-444, *passim*
Munifex, the Roman, ii. 454
Munster; *see* Muimeam
Murchad, king of Leinster, i. 162
Murchard, a lord of Cantyre, ii. 87, 90
Murder, crime of, i. 268, 269
Murketagh, circuit of, i. 38
Murketagh O'Brien, i. 164, 168, 170, 346
Murray (Muireim, Armorica), i. 33
Musselburgh, i. 414

NAIRN, i. 410; burgh of, 443
Nant, not a Celtic word apparently, ii. 224
Native-Men, the, i. 208, 245, 251, 301; ii. 155, 162, 262, 269. *See* Villeinage
Nectan, king of the Picts, i. 9, 334
Nectan's Mere, battle of, i. 12, 13, 15, 71
Neifs; *see* Native-men
"Neighbourhood, the," i. 266, 275; ii. 335. *See* Voisinage
Nertha, identical with Niord and Hertha, and mythical ancestor of the Sviar and Suevi, ii. 249
Neustria, ii. 213
Newcastle, i. 140; fortress of, 192, 213; treaty of, between Henry III. and Alexander II., ii. 41, 42
Nial, the Hy; *see* Hy Nial
Niala Saga, i. 63
Nicolas Breakespear (Adrian IV.), i. 376
Nicolas de Soulis, ii. 65
Nicolson, Andrew, a leader in Haco's expedition, ii. 92, 93, 105
Niebuhr, his theory about the Celts, ii. 222
Niel (Nigel), earl of Carrick, grandfather of Robert Bruce, i. 240, 241; *see also* 390; ii. 109
Ninian, a British bishop, first mission-

ary to the southern Picts in the 5th century, i. 8, 324; his see of Whithern revived, 18
Niord; *see* Nertha
Nith, deanery of, i. 358
Nobility, Scottish, their place and power in the 12th and 13th centuries, i. 236, *seq.*; commerce forbidden to, 441
Nomes of Egypt, ii. 200
Nordreys, the (Northern Hebrides), ii. 4, 100, 371. *See* Man
Norfolk, earl of, i. 417, 435
Norham, fortress of, i. 192; besieged, then burned, by David I., 198, 199; conferences at, between William and Richard, 419, and John, 429; ii. 30; invested by Alexander II., ii. 4
Norman soldiery under William, i. 130
Normandy, duke of, i. 224, 345. *See* Henry Fitz Empress.
Normans, Scots, and Erse or Irish, different acceptations of, i. 428
Normanville, Thomas de, ii. 66
Norsemen, settlement of, in Ireland, i. 42 (*see* Vikings); contest for supremacy between the Dugall and Fingall, and their subsequent inroads upon the Scots, Britons, and Saxons, 43-47, 53, 55, *seq.*, 73, 74, 76; threatened invasion of Scotland in Edgar's reign, 160
Northallerton, battle of, i. 204, 207; ii. 40
Northampton, earl of, i. 226, 352; councils at, 378, 398; ii. 30
Northern counties of England, feudal dependence of, on the Scottish king, i. 193, 213, 218, 223, 352; resignation of, by Malcolm IV., 352, 434; how viewed by William the Lion, 362, 363; subsequent efforts to obtain their restoration from Richard, 397-400; evasive policy of John, 415-418; made over to Alexander II. by Eustace de Vesci, ii. 4, 5, 32; Scottish claims on, finally compromised, 32, 428. *See* English claims
Northern Leod (North People), ii. 281, 432, 433
Northumberland, barons of, i. 190, 211, 213, 214; William the Lion in, 364, *seq.*; earldom of, bought from Richard by the bishop of Durham, 396; the earldom claimed by William, 397; resigned by the bishop of Durham, 398; its pecuniary, without the political advantages, offered to, but not accepted by, William, 398, 399, 444; sheriff of, 417
Northumbria, kingdom of, i. 4; missionary labours of Aidan among the Angles of, 8, 9; confusion resulting on the death of Ethelfrid, 10, 11; discomfiture of Egfrid, 11-13; restoration of Northumbrian power by Eadbert, 16; decline of, 21
Northumbria, province of, attacked by Norsemen, i. 57, *seq.* (*see* Brunanburgh); dominion of the Danes, 58, 59; Saxons of, 60, 69; abandoned by Olave Sitricson, 70; submission of the Danes to Edred of England, 72; return of Olave, and his defeat, 73; Eric re-established in Danish Northumbria, for two years, 74 (*see* Eric); the two invasions of Malcolm II., 92, *seq.*, 95, 96; invasion of Duncan I., 114; expedition of Siward against Macbeth, 122, 123; northern wars of William the Conqueror, 130, *seq.*; ravages of the Scottish army under Malcolm III., 133 (*see* Cospatric); Anglo-Norman barons of, 190, 211, 213; horrors of the war under David I., 211
Norway, the Maid of, ii. 117; wergilds in, 299
Norwegian Court, i. 313, 314, 401, 406; negotiations of Alexander II. regarding the Western Isles, ii. 43, 44; embassy of Alexander III., 83, 104, 105. *See* Eystein
Norwegian fleet under Magnus Olaveson, i. 165, *seq.*; expedition of Ospac, ii. 21, 22
Nottingham, treaty between Stephen and David I. confirmed at, i. 214; siege of the castle of, 397; John's appointment to meet William the Lion at, 415

Obærati, a class amongst the Gauls, ii. 216
Obolus, the, ii. 344, *seq.*
Observances, external, previous to the use of charters, i. 249; ii. 1
Ochil Hills, i. 46
Odal-bonders of Denmark, i. 22, 135, 310; ii. 165, 274, 300, 310
Odal rights, Scandinavian, i. 80, 81, 94, 102, 106, 114, 164, 403; ii. 165, 300
Odallers; *see* Ætheling
Odinism, i. 86; not an ancient faith, ii. 248
Œsir, the, of Scandinavia, ii. 203
Offences, punishment of, in ancient Scotland, i. 258, *seq.* *See* Justice
Ogmund, a leader of Haco's, ii. 92

Ogtierns ("lesser lords"), i. 103, 237, 240; ii. 261
Oikel (Ekkialsbakka), the river, i. 46
Oirir-Gael (Gael of the coasts), i. 44, 56, 162, 167, 236, 263, 350; ii. 12; lords of the, ii. 189, 193-196
Oirrighs, Gaelic, i. 34, 105; their tribute to, and entertainment of, the Ardrighs, 37, 161
Olave, a gallant Norwegian at the battle of Largs, ii. 93
Olave, brother-in-law of Harald Mac Madach; his expedition to Norway, i. 432
Olave Godfreyson, of Man, i. 346-348; ii. 98, *seq.*
Olave Godredson, king of Man, i. 219
Olave Sitricson, i. 60, 61, 66, 73, 74, 161
Olave, son of Godfrey, i. 56, 63, 66
Olave, son of Malcolm I., i. 79
Olave the Fair, leader of the Northmen of Ireland, i. 42-44, 56
Olave the Saint, i. 314, 327
Olave Tryggveson, his seizure of Sigurd, earl of Orkney, i. 85, 124; payment of Danegeld to, ii. 459
Olifard, David, i. 216
Olifard, Walter, ii. 493
Ollaig, Dun, i. 12, 13
Ὁμιλεια, the Hebrew equivalent of "Morgen-gifa," ii. 325
Optimates, the, ii. 150
Ordeal, the, "of battle, iron, or water," in the system of the Voisinage, i. 266, 269, 438
Ordericus Vitalis, ii. 130, 142, 147, 152; ii. 480-483
Ore, the, Teutonic name for weight, ii. 243, *seq.*
Orkney, Jarls of, i. 68, 80, *seq.*; ii. 187
Orkneys, conquest of the, by the Northmen, i. 45; events during the reign of Kenneth II., 80, *seq.*; converted to Christianity, 85; resignation of Odal privileges to Einar, and their restitution by Sigurd, 81, 94; rule of Sigurd's sons, 112, 113; Jarl Thorfin, 113-115; seizure by Magnus Olaveson, 165, 169, 400; subsequent events, 401-414
Osbern, Jarl, his union with Edgar, in the attack on William's Norman castles at York, i. 130, 131
Ospac, expedition of, against the Sudreys, ii. 21, 22, 101
Ostia, bishop of (Alberic), i. 175, 210-213
Ostmen, the Dublin, i. 349
Osulf, a Norse chieftain, i. 74; ii. 442
Oswald, a Northumbrian prince, i. 11
Oswy, a Northumbrian prince, i. 11
Otho of Saxony, i. 399
Ottabone dei Fieschi, Cardinal, ii. 107; refused admission into Scotland as legate, as being accredited only to England, 108
Otto, cardinal-legate, ii. 32
Ottir, a Norse Jarl, i. 57
Ottir, of Man, i. 166, 349; ii. 104
Ottir, lord of Thurso, i. 402, 406
Outfangthief, i. 285. *See* Infang thief
Owen of Reged, i. 4

PAGANS (country people), i. 326
"Painted men, the land of," ii. 224. *See* Picts and Scots
Palatinates of Chester and Durham, i. 440
Palatines, i. 355
Palatinus, Anglo-Saxon office of, i. 316
Palgrave, Sir Francis, i. 358; ii. 481
Palladius, the deacon, i. 322, 323
Pandulf, letters of, i. 423; appointed legate, ii. 10
Papal bulls, i. 175
Paris, the monk, ii. 58, *seq.*
Parliament, basis of the modern, i. 277; germs of, 438; ii. 144, 147, 148, 152-154
Parliaments, early, in England, ii. 146, 147
Paschal, Pope, i. 181
Patrick, Earl, of Dunbar, i. 399, 422, 433; ii. 27, 64
Patrick of Galloway, ii. 9, 34, *seq.*, 193
Patroclus, bishop of Arles, i. 323
Patronage, Church, William's policy as to, i. 434
Patronage (Mundborh), system of, ii. 447, *seq.*; its Roman origin, 450; earliest mention of, in Anglo-Saxon laws, 456
Patronymic, the, i. 291; marks a stage in society, ii. 489
Paul Balkason, chieftain of Skye, ii. 100
Paul, joint earl of Orkney with Erlend, i. 165, 400
Paul the Silent, joint earl of Orkney with his brother Harald the Eloquent, i. 401, *seq.*
Peanfahel, a Pictish word, ii. 380
Peebles, national assemblies at, i. 439
Peers, judgment by one's, i. 275, 276
Pelagius, i. 322
Pembroke, earl of, i. 435; ii. 26
Penance of Henry II., i. 371

Pen-Cenedl (Cen-Cinnitd), the Gallic, i. 27, 103; ii. 285, 303, 304, 322, 463
Penda, of Mercia, i. 16, 17, 71
Pening, the old Scandinavian, ii. 344, *seq.*
Pennylands, ii. 377
Penrith, ii. 117
Pentland Firth, i. 83, 115
Pentland Hills, i. 76; ii. 5
Pepin, i. 313
Percy, Alan, i. 202
Percy, William, i. 200
"Perfect in his generations," meaning of, ii. 315
Personal offences, law as to, i. 258
Perth, contest on the North Inch of, i. 208, 272; the conspiracy of, 354, 360; inundation at, 426; council of Alexander II. at, ii. 14, 15
Peter of Savoy, ii. 74
Peter of Leon (anti-pope Anacletus, rival of Innocent II.), i. 210
Peter des Roches, bishop of Winchester, ii. 25, 29, 78, 180, 418
Peterborough, plundered by the Danes under Jarl Osbern, i. 132
Peveril, William, i. 200, 351
Philip Augustus of France, i. 242, 397, 417
Philip de Valoniis, chamberlain of Scotland, i. 421
Philip de Mowbray, i. 422
"Pictish provinces" of Beda, i. 32, 33; disruption of, 38
Picts, i. 2, 30; the northern, Columba's mission to, 6, 7; the southern profess Christianity under Ninian, 8; making common cause with the Dalriads, become tributary to the North-umbrian sovereign, 11, 14; recover their liberty after the overthrow of Egfrid, 12, 13; ascendency of Angus Mac Fergus, 13; termination of Pictish monarchy, 20; union of, with the Scots, under the Mac Alpin dynasty, 23; the Celtic principle of "division" traced in a sketch of the Picts till their union with the Scots under Kenneth, 30-40; list of their kings, ii. 185
Picts and Scots, questions relating to, ii. 366-381
Picts, Irish, i. 21
Pi-Romi of Egypt, what, ii. 202
Pit and gallows, barons holding the jurisdiction of, i. 264, 440; ii. 49, 135
Plantagenets, the, i. 155, 184; ii. 519
Pleas, the four great, i. 283, 438; ii. 128, 133
Ponteland, ii. 39, 40, 421
Princeps, the hereditary head of the race in Celtic government, i. 27
Prior, office of, i. 339
Probi homines, the class denominated, i. 256, 298, 302, 311
Proprietary, the earlier, of Scotland, i. 237
Provincial courts, i. 281; ii. 49
Provision dealers, burghal regulations as to, i. 302
Provosts of burghs, i. 298, 303, 438
Prudhoe Castle, siege of, i. 366, 367
Ptolemy, i. 32
Publicity, necessity of, in social life, i. 268, 269, 437
Purchase, laws regulating, i. 260, *seq.*, 303

QUARTERINGS, original meaning of, ii. 310, 320
Qwhele (Qwhwle, Qwhevil), the clan, i. 208, 272

RAGNAR LODBROC; *see* Lodbroc
Ragnhilda, daughter of Eric Blodæxe, i. 83
Ralph, titular bishop of the Orkneys, i. 201, 204
Ramparts, Roman, i. 1, 2
Ramsay, Peter, bishop of Aberdeen, i. 335
Ranald, the clan, ii. 194, 196
Randolph, earl of Moray, i. 434
Randolph family, i. 358
Ranulph (Randolph), earl of Chester, i. 194, 215, 218, 352; ii. 9
Ranulph de Glanville, i. 368, 370, 389
Rape (Hrepp), in Sussex, meaning of the word, ii. 213, 433. *See* Rope
Rath-inver-amon, a fort on the Tay, i. 91, 426
Raths; *see* Duns
Rectitudinem facere, i. 424; ii. 402
Red hand, law regarding the homicide taken, i. 440; ii. 135
Reeve, office of, i. 276, 277; burgh-reeve, 298
Reeves, William, D.D., his edition of Adamnan referred to, i. 6-8
"Refection," obligation of, i. 238, 239; ii. 207
Regality, privileges of a, i. 355, 439, 440; court of the, ii. 134, 135, 469
Regency during the minority of Alexander III., dissension regarding, ii. 61-79; the original regents, 65; the regents substituted, 66

Reginald, bishop of the Isles, ii. 100
Regium geldum, the, ii. 150
Reginald Godfreyson, i. 66, 67, 70
Reginald hy Ivar, i. 52, 56, *seq.*, 66
Reginald Mac Torquil, i. 349
Reginald of Bath, a physician deputed to Scotland to attend the young queen of Alexander III., ii. 62
Reginald of Roxburgh, envoy of Alexander III. to Norway, ii. 104, 105
Reiters of Brabant, i. 196, 364; ii. 5, 40
Relief, a fine exacted from the heir on succession, ii. 129, 519
Renfrew, barony of, ii. 24
"Rere-Cross, the," the limit of the Bishop of Glasgow's jurisdiction, i. 223
Revenue, sources of, ii. 129
Rhy ; *see* Righ
Rhymes, Kentish, i. 243, 256
Rhys of South Wales, i. 358
Richard, almoner of the temple, ii. 66
Richard, bishop of St. Andrews, i. 382
Richard Cœur de Lion (I. of England), rebellion of, against his father, Henry II., 395; charter of, annulling the concessions extorted from William the Lion, 396, 417; enters enthusiastically into the third crusade, 396, 397; ii. 9
Richard de Courcy, i. 200
Richard de Lucy, i. 364, 365
Richard de Moreville, i. 367, 387
Richard, earl of Cornwall, ii. 41
Richard of Cirencester, errors of a treatise attributed to, i. 2
Richard of Hexham, i. 194, *seq.*
Richard the Mareschal, ii. 24, 29
Richborough, i. 2
Richmond Castle, i. 370
Richmond, Earl of, i. 217
Rievaulx, abbot of, i. 212, 225
Righ (Rhy, Rex), the king among the Scottish Gael, i. 31, 32, 140; like the ῥήξ among the ancient Germans, ii. 204
Riki, the, of the Germanic tribes, ii. 209, 213
Rixinc, prince of the Northumbrian Angles, i. 58, 71
Robbery, crime of, i. 259, 440; ii. 334, 335
Robert I. (Bruce), i. 32, 236, 241, 390
Robert II., i. 240
Robert, chancellor of Scotland, ii. 60, 504
Robert de Bruce, third Lord of Annandale, i. 422, 433
Robert de Bruce, fourth Lord of Annandale, ii. 10, 56, 66, 77
Robert de Bruce, fifth Lord of Annandale, his singular and romantic love-match, ii. 110
Robert de Bruce, of Cleveland, i. 200, 203
Robert d'Estoteville, i. 200, 368
Robert de Lundoniis, illegitimate son of William the Lion, i. 433
Robert de Manners, ii. 66, 76
Robert de Mellent, i. 157
Robert de Mowbray, i. 146, 159, 187, 200, 366, 372; ii. 463
Robert de Ros, i. 421, 433; ii. 63, 65
Robert de Vaux, castellan of Carlisle, i. 366, 380
Robert, duke of Normandy, eldest son of the Conqueror, i. 140, 141; founds a castle on the Tyne, 140
Robert, earl of Gloucester, i. 173, 189, 192, 200
Robert Fitz Walter, i. 431
Robert, prior of Scone, appointed bishop of St. Andrews, i. 181, 186, 377
Robert the Frison, Count of Flanders, i. 136
Rochester (Hrofa's *ceaster*), i. 293
Roderic, an islesman who claimed Bute as his birthright, ii. 88
Roger, archbishop of York, i. 377, 378; dispute with Becket of Canterbury, 378, 379; his death, 383
Roger, Count of Sicily, i. 210
Roger de Quinci, Earl of Winchester, and Constable of Scotland, i. 422; ii. 25, 28, 29
Rognwald, Jarl of Mœri, i. 45, 80
Rognwald the Saint, i. 402, *seq.*
Roland de Carrick, i. 240
Roland of Galloway (*see* Uchtred), i. 387, 390, 392; ii. 24
Roll, the lost, of Charters, etc., of the time of William and Alexander, i. 393
Roman law, i. 274, 275
Roman occupation of Britain, i. 1; various boundaries of the province, 1, 2; remnants of old cities, 293
Rome, Church of, its archives, i. 176; policy of Hildebrand, 174, *seq.*
Rome, Macbeth's liberality to the poor of, i. 121
Ronald, a distinguished personage in Haco's expedition, ii. 93
Ronald Godfreyson, king of Man, ii. 99
Ronald of Orkney, *see* Rognwald the Saint
Ronald Olaveson, king of Man, i. 412
Ronaldsvoe, harbour of, ii. 85

Rope, custom of marking out allotments of land by a, ii. 213
Rory, Earl, i. 184
Rory, the clan, ii. 196
Rose family, the, i. 443
Rose, Golden, interpretation of the, i. 383
Rosmarkinch, bishopric of, i. 385
Ross, Earl of, his attacks on Skye resented by Haco, ii. 83, *seq.* *See* Haco, Ferquhard Mac-in-Sagart.
Ross, earldom of, i. 236, 355; ii. 4, 23, 26, 45, 196; bishop of, i. 412; see of, 335, 441; barons and thanes of, 391; ii. 4; *castella* of, i. 426
Rothenec, thane of, i. 289
Rothsay Castle, ii. 88
Roturier (allodial tenure), i. 241, 296, 300, 442; the class, ii. 215, 319, 323
Rouen; archbishop of, i. 357; siege of, 372
Roxburgh, castle of, i. 191, 219, 221, 350, 373, 394, 396; ii. 5, 99; burgh of, 298
Royal authority developed under Malcolm II., i. 100-109; under David, 317, 318; under William, 435, 436, 438; under the Alexanders, ii. 127, *seq.*
Royal courts of justice, i. 258; ii. 130-134. *See* Justice
Royal residences, i. 233, 443; ii. 131
Ruadhri (Roderic, Rory), head of the Moray family, i. 120
Rufus; *see* William II.
Ruling class, the, in ancient nations, ii. 199-207
Runnymede, ii. 2
Rushen, priory at, i. 219, 347
Russell, John, marries the countess of Menteith, ii. 79, 80
Rutherglen, i. 309
Rutupe (Richborough), i. 2
Rydderch ap Mervyn, a Welsh prince, i. 54

Sac, i. 52, 285; ii. 264, 412, 439, 468
Sacerdotal and royal character united in ancient nations, ii. 199-204
Sacheverell's History of Isle of Man referred to, i. 66
Sacred Stone, the, on which the inauguration of kings took place, i. 35, 36; ii. 54
Saddel, monastery of, ii. 87
Sætta, the, ii. 214, 264; meaning of, 265, 297, 298, 456
Sagibaro, Frankish office of, i. 274, 275; ii. 291
Saiga, the, of Bavaria and Suabia, ii. 344, 347, *seq.*
Sak-ore, the, ii. 344, *seq.*
Sale of property, laws for the regulation of, i. 260, *seq.*, 303
Salic law, i. 261, 273, 284, 311; "living by," ii. 292, 293
Salica terra, meaning of, ii. 293, 313, 452
Salisbury, Roger, bishop of, i. 189, 191
Salvis dignitatibus suis, meaning of, ii. 407
Samson, an ancient British bishop, i. 349
Samuel of Galloway, i. 387
Sanctuary. *See* Gryth
Sandwirth, battle of, in Man, i. 166, 349
Saxonia (the Lothians), i. 40
Saxons, invasion of, i. 3; the, of Northumbria, 60, 61; refugees in Scotland, 134, 156, 185; name of, ii. 369; wergilds of the, 278
Sayer de Quinci, Earl of Winchester, i. 421
Scabini, the, i. 256, 274, 275, 281, 311, 314; ii. 134, 318
Scalcs, among the Franks, i. 313
Scaldings or Skioldings of the North, i. 42; ii. 430; their mythical descent, ii. 249
Scandinavians, the ruling class amongst the, ii. 203
Sceat, the, ii. 344, 347, 349
Scepenbar freeholders, Saxon, i. 256, 298, 311; ii. 318
Scilling, the old English, ii. 348
Scolloc, Scollofth, Scoloc-land, ii. 379
Scone, becomes capital of Scotland, i. 51, 232, 443; the Moot-hill of, 53; ii. 132; "palace" of, i. 109; monastery of, 173
Scot, appellation of, superseded the name Pict, i. 23. *See* Picts and Scots
Scot, John, dispute regarding his election to the see of St. Andrews, i. 382-384; appointed to Dunkeld, 384
Scotia, defined, i. 236
Scotticanum servitium, i. 208
Scots, Normans, and Erse or Irish, different acceptations of, i. 428
"Scot's-water," the (Firth of Forth), i. 40, 233, 251, 262; ii. 131, 143
Scotus, to whom applied, ii. 367-369
Scrimgeour, Sir Alexander, i. 173
Scruple, the, ii. 345, *seq.*
Scutage, ii. 175, 336, 520
Scythia, "the kings" or royal tribes of, ii. 202

Seals, not in general use in the 13th century, ii. 489
Sedition, crime of, i. 436
Segrave ; *see* Stephen de Segrave
Sele-land, ii. 293, 313, 452
Selkirk Forest, i. 16
Selvach, a Dalriadic chieftain, i. 15
Seneschal, office of, i. 312, 315, 317
Senior, the, in the family holding, i. 238-240, 405 ; his position, ii. 218, 260, 267, 311, 321, 323, 467
Senones, a people of ancient Gaul, i. 25
Separation, principle of, in Celtic government, i. 26-32, 38, 77, 273 ; ii. 203, *seq.*
Sequani, the, ii. 210
Serfs, in Scotland, ii. 169 ; three classes of, 314
Service, Scottish and military, i. 208, 234, 290, 291 ; ii. 14, 263, 495
Service, the tie of, in ancient communities, i. 101. *See* ii. 251-274, *passim*
Seven Churches, the, of Irish and Scottish religious societies, i. 337, 338
"Seven Earls," the, ii. 77, 502-505
"Seven Provinces," the, i. 32, 33
Severus, i. 2 ; wall of, ii. 229
Sheep, a man not to be hanged for less than the value of two, i. 259
Sheriff, office of, i. 253-257 ; courts of the, 257, 439 ; ii. 49
Sheriffdom, introduction of the, i. 255-257, 438
Shetland Isles, the, i. 45, 406 ; given up to Norway, 432
Shetlanders, the, i. 403
Shifting, the allotment so called, i. 243
Shilling, the English, ii. 521. *See* Scilling
Ship-building, ii. 173
Shire-gemote, the Anglo-Saxon, i. 277
Sibylla, queen of Alexander I. of Scotland, i. 182
Sigurd, Jarl, i. 45 ; account of his wars, 46, 47
Sigurd Lodverson, Jarl of Orkney, i. 84, *seq.* ; victory over Finlay Mac Rory, 93, 94, 110 ; marriage with a daughter of Malcolm II., 111 ; killed at the battle of Clontarf, 94, 111
Sigurd Magnusson, i. 165, 167, 169, 345, 347, 400 ; attempt to gain the throne of Norway, 432
Silfer, the, ii. 344, *seq.*
Simon de Montfort, ii. 63, 74, 114
Simon de St. Liz, i. 187, 386
Sipzal (method of counting relationship), ii. 309
Sitric, a son of Ivar, i. 56, 57, 161
Sitric, a grandson of Ivar, i. 57, 74
Siward, a Danish earl of Northumbria, i. 122, 123
Siward Beorn, an adherent of Edgar the Atheling, i. 133-135, 184, 189
Sixhyndman, ii. 214 ; definition of, 280, 297, 322
Skida Moor, i. 93
Skioldings, Skioldungr ; *see* Scaldings
Skipton in Craven, Honor of, i. 222
Skuli, son of Thorfin, his attempt to wrest the Orkneys from his brother Liotr, i. 84
Skye, island of, ii. 100
"Sleepers, the Seven," day of, i. 122
Sluagh ; see Hosting
Smith's bothy, the, near Elgin, the scene of Duncan I.'s assassination by Macbeth, i. 116, 121
Soc, i. 52, 285 ; ii. 264, 412, 439, 468
Socage, tenure of, i. 300 ; unknown in Saxon England, ii. 270
Socmen of Lincoln and York, i. 134, 310 ; ii. 157 ; of Kent, ii. 272
Socn, defined, ii. 458, 461
Solomon, dean of Glasgow, i. 378
Somarled Mac Gillebride, lord of the Oirir-Gael, i. 44, 56 ; rising of, 345, 349, 350 ; defeat of, 359 ; race of, ii. 13, 21, 189, 193, *seq.*
Somarled, son of Sigurd Lodverson, i. 112, 113
Somerville, i. 184
Sorning, i. 37, 437 ; ii. 207, 475
Sors, ii. 256, 264. *See* Allotment.
Soulis, Nicolas de, ii. 65
Soulis, William de, ii. 76
Southampton, i. 370
Southumbrian provinces of England, i. 68
Spey, the, i. 75, 76, 139, 173
Spittal, the ; *see* Hospital
Spittal Fields, in London, i. 306
Spread-eagle, death of the, i. 48, 81
Squires, or sub-vavassors, a branch of the baronage, ii. 140
Stackbolle, Dr. John, miraculous recovery of, i. 413
Stallengers, in Fair-time, i. 304
Stallr, Norse, office of, i. 253, 313, 314 ; ii. 460
Stamford Bridge, battle of, i. 129, 162
Standard, battle of the, i. 205, 355
Stanemoor, i. 223 ; skirmish on, 74 ; Kenneth II. at, 79
Steel-bow, what, i. 313 ; ii. 161, 271
Stephen de Segrave, ii. 10, 12
Stephen of Boulogne, i. 153, 189 ;

crowned king of England, 192; war with David I., 194-213; arrangements for peace, 213; civil war, Stephen defeated at Lincoln, 215, 351; ii. 518
Stellingas, rising of the, ii. 235, 319
Sterling, probable meaning of, ii. 350
Steward, Anglo-Saxon office of, i. 316
Stewardship of Scotland, sale of, i. 184
Stewart, Alexander, ii. 66, 76
Stewart, Walter (Balloch), ii. 79, 80
Stewarts, descent of the, i. 184, 317
Stickathrow, battle of, i. 190, 317
Stirling, burgh of, i. 298; castle of, 373; William's council at, 421, 423; sheriffdom of, plundered by the Islesmen, ii. 90, 97
Stock, trade, i. 301
"Stone of Destiny," Scottish, at coronations, i. 36; ii. 54
Stone, sacred; *see* Sacred stone
Stormont, earldom of, i. 236
Stralachlan, ii. 18
Strathallan, i. 49
Strathbogie, i. 76, 124; lordship of, ii. 9
Strath Clyde (Scottish Cumbria), i. 18, 19, 70; Britons of, 40, 41, 77; annexation of, 54, 55, 68; princes of, 55, 71, 72, 98, 99; incorporated with the Scottish kingdom, 98, 126; separated by Edgar, 170, 171, 183; again re-united, 187, 233, 235; burghs of, 442
Strathearn, defeat of Northmen in, by Constantine II., i. 53, 55; earldom of, 236
Strathearn, earls of, i. 184, 336; ii. 51, 55, 66
Strides, tale of the, i. 223, 356
Stuht; *see* Steelbow
Styca, the Northumbrian, ii. 344, 347
Styresman, Norse office of, i. 22
St. Albans, chroniclers connected with, i. 91. *See* Frederic
St. Ambrose, his definition of marriage, ii. 326
St. Andrews, foundation of, i. 21, 39; privileges transferred to, from Dunkeld, by Cyric, 50, 108, 334; Constantine II. becomes abbot of, 67; episcopal jurisdiction of, 88; bishopric of, 174, 179, 342, 376, 440; grant of the *Cursus Apri* to, 155, 185, 335; priory of, established and endowed by David, 339; Registry of the priory of, 279, 280, 342; David's proceedings in the diocese of, 337-340; bishops of, 412, 421; ii. 55, 107
St. Bernard, i. 225
St. Columba; *see* Columba.
St. Cuthbert, i. 17; lands of, 52, 57, 73, 95, 96; ii. 432; relics of, i. 71
St. Denis, abbey of, i. 326
St. Edward's chair, i. 36; ii. 54
St. Magnus the Martyr; *see* Magnus Erlendson
St. Martin, i. 324
St. Mary's, provostry and chapter of, i. 342, 343
St. Oswald, relics of, i. 71
St. Patrick, i. 321-324; ii. 307, 355
St. Servans, Culdee establishment at, i. 339, 340
Sub-armigeri, the, ii. 140
Succession, ancient regal, in Scotland, i. 20, 21, 53, 77; defects of, 89, 91, 97, 156
Sudreys, the (Southern Hebrides), i. 162, 167, 350, 412; ii. 21, 22, 44, 45, 98
Suerer, king of Norway, i. 411
Suevi, the, ii. 249; northern, who, 296
Sumerlide (summer army), anciently applied to the Norsemen, i. 76; ii. 235
Sumorlida, the (piracy), i. 259; ii. 300
Sun, annular eclipse of, on 5th August 1263, ii. 85
Sutherland (*Sudrland* of Orkney Jarls), i. 46; earldom of, 95, 111, 236; ii. 497, 498; lordship of, ii. 23
Sven; *see* Cnicht
Sverre, grandfather of Haco, ii. 96
Sviar, the, ii. 249
Sweden, proprietary in, i. 273; old custom in, ii. 256, 257, 465; wergilds in, 284, 301
Swedes, attacked by Magnus Olaveson, i. 168
Sweyne Asleifason, a nobleman of Caithness, i. 404-408
Sweyne, king of Denmark, i. 130, 132
Swimming a river, a feat among soldiery, i. 173
Swiss, the, ii. 249

TACITUS, i. 1, 244
Tacksmen or free tenantry, ii. 51, 155, *seq.*
Tallies (notched sticks), payment with, ii. 133
Talorcan, son of a Northumbrian prince, became a Pictish king, i. 11, 13, 20
Tanist (Righdomna), the heir-apparent to the throne among the Celts, i. 36, 72, 97, 154; applied also to ecclesiastical offices, 38. *See* ii. 218
Tanistry, law of, ii. 260, 261, 465

Tara, feast of; *see* Temora
Tarbert, Loch, i. 167
Tascio, the Celtic, i. 240, 313. *See* Toshach
Tay, the river, i. 426
Team, the legal process in the law of warranty, i. 261, 263, 285
"Tectum et focus," ii. 473
Temora, Feas (Feast of Tara), a convention in Ireland so called, i. 30
Tenant-right, ii. 269
Tenantry, the lesser, ii. 155, *seq.*
Tenants-in-capite, ii. 324
Tenure of land, before the establishment of the feudal system, i. 100-110; the Gavel, 237-243; Borough-English, 243, ii. 268; burgage, i. 299, *seq.*; *Franc-Almoigne*, ii. 128, 323; Celtic, 259-262; in fee-farm, 259, 462; copyhold, 269; allodial, *see* Allodial; fixity of, originally unknown, 251; two tenures among the early Burgundians, 254-256; two in Scotland in the 13th century, 445-447
Tenure-par-Parage, i. 242; ii. 261, *seq.*, 323
Termon lands, i. 329, 330, 332; ii. 469
Territorial names, i. 292
Tertius denarius, grant of the, what it implied, i. 193, 330; ii. 358, 412, 413, 461
Teutonic invasion, i. 3; system of law, 252, 274, 275
Teutons, the system of caste among the, ii. 204. *See* Celts, Germans
Thanage, the ancient Scottish, i. 103, *seq.*, 185; ii. 446, *seq.*
Thane (Tighern, Ti'ern), office of the, i. 29, 102, 290; ii. 444-471; difference between Scottish Thane and Saxon Thegn, i. 185, 234, 237; bound to be provided with defensive armour, ii. 136; table illustrative of the principle of succession in the thanage, 310
Thane-right, or nobility, i. 248
Theel, Theel-boor, Theel-land, in Friesland, ii. 253, 254, 266
Theft, punishment of, i. 258; ii. 47, 48
Thegn-land, heavy burdens on, ii. 512, 513
Thegns, burgh and upland, i. 295-297, 302; ii. 336
Theobald, archbishop of Canterbury, ii. 507
Theodosius, i. 2, 3
Thingmen, the Norse, i. 279; ii. 4, 460
"Thirds," principle of, ii. 210, 271, 461; widely traceable, 462
Thirsk, castle of, i. 366
Thomas, archbishop of York, i. 178, 347
Thomas de Normanville, ii. 66
Thomas Fitz-Randolph, ii. 66
Thomas, natural son of Alan of Galloway, i. 422; ii. 26-28, 101, 118
Thomas of Canterbury; *see* Becket
Thomas of Savoy, ii. 40
Thomas of Thirlstane, ii. 20
Thomas the Durward, i. 427
Thor, the leading deity with the Northmen, ii. 248
Thorbiorn, of Orkney, i. 405
Thorfin Haraldson, i. 409
Thorfin Ottirson, i. 349, 350
Thorfin Sigurdson, grandson of Malcolm II., and earl of Sutherland and Caithness, i. 95, 111, 161; his contest with Duncan I., 113-116, 123, 127; his sons, 162
Thorfin the Skull-cleaver, son of Einar, earl of Orkney, i. 82; his sons, 83
Thorgils, bishop of Stavangro, ii. 86
Thorkell Fostri, i. 115
Thorstein the Red, son of Olave, and king of the Dugall, i. 44, 46, 47, 49, 125; his sister and niece, 82
Thorstein, archbishop of York, i. 178, 194, 200, 222, 358, 377
Thrymsa (Trimessis), the Anglo-Danish, ii. 344, *seq.*
Thuringians, conquest of the, ii. 236
Thurso, i. 402, 406
Tighernach, an Irish abbot, i. 5; his annals referred to, 6, 7, 10, 13, 74, 89, 90, 116, 124; ii. 354, 400
Tigherns, ii. 261. *See* Thane
Tiron, monastery of, i. 211
Tithes and dues, i. 440. *See* Burghs
Tonsure, question of the, in the British churches, i. 331
Toraic, island of, i. 15
Toshach (Dux), military leader (elective) amongst the Gauls, i. 24-28, 104, 237, 240
Tosti, earl of Yorkshire and Northumberland, intrigues of, i. 128, 129; ii. 386
Toulouse, expedition against, i. 354
Tours, abbey of, i. 325
Town, original acceptation of the term, i. 294
Towns, early, i. 293. *See* Burgh
Trades, burghal regulations as to, i. 302, 303, 442
Traders and burghers, distinction between, in early burghs, i. 295

"Third Estate" in Scotland, i. 292, 311, 317; ii. 143, *seq.*, 152-154
Transposition of historical events, examples of, i. 123, 124, 412
Traquair, William at, i. 422
Travelling with a retinue unnecessarily large, discountenanced, i. 437
Trebellius, i. 3
Trial, a, in Fife, i. 279, 280
Tribute, exaction of, an ancient test of dependence, i. 13, 38
Trinoda necessitas, when first imposed, ii. 336
Triocha-ced (=Baronies), i. 102, 103, 106; ii. 340
Trodlheima, the Virgin Saint, supposed interference in behalf of the bishop of Caithness, i. 413
Troy pound, ii. 342; origin of, 352
Trumwine, bishop of Abercorn, i. 12, 13, 178
Trust (Commendation), ii. 215; district, 334; definition of, 451
Trything (Riding), ii. 433
Tulach-Aman, Rath of, i. 12, 13
Tullibardine, thane of, 208
Tun, the, i. 265, 294
Turgot, biographer of Queen Margaret, i. 147, *seq.*, 170; appointed bishop of St. Andrews, 174, 178; his death in Durham monastery, 179
Turnberry Castle, ii. 110
Tweed, the, i. 365
Tweedmouth, the castle at, i. 418, 419, 423, 442; ii. 7
Twelfhyndmen, the, i. 297; ii. 278, 293
Twyhyndmen, the, i. 297, 302; ii. 299
Twysawg, a Welsh officer of State, similar to the Dux or Toshach among the Gauls, i. 31, 32
Tyne, a castle founded on the, by Robert of Normandy, i, 140
Tynedale, lands of, i. 419; ii. 117
Tyne Moor, battle of, i. 58, 59
Tything-man, the, ii. 335, 338

UCHTRED of Northumbria, i. 58
Uchtred, lord of Galloway, i. 371; barbarous death of, 380
Uchtred, son of Waltheof of Northumbria, his contest with Malcolm II., i. 93; his death, 95; mentioned, 132; ii. 442
Uladh, its various meanings, i. 14, 21, 169; ii. 226, 230. *See* Gulad
Ulf, son of Harold of England, i. 141
Ulster, earldom of, ii. 99
Umphravilles, the, i. 184; ii. 23
Unben, the supreme authority among the Cymri, i. 16, 31
Union, ancient bonds of, i. 101. *See* Feudal System
Universitas, use of the word, ii. 153
University, i. 233
Urban II., Pope, i. 175
Urien, a favourite hero of the bards, i. 4
Utware and Inware, i. 208

VALENS, Emperor, i. 2
Valentia, the district between Forth and Tyne, i. 2; occupation of, by the southern Picts, 8
Vandals, the, ii. 210, 211
Vavassors, i. 103, 290, 319, 354; ii. 140, 322; courts of, ii. 135
Vecturiones, a division of the Picts, i. 2, 30
Veitsla, Veitslo, i. 239, 262; ii. 297, 299, 462
Vercingetorix, i. 25; meaning of, 32
Vergobreith, the Celtic, an elective officer (Vergobretus = the man of law) among the Gauls, i. 24-28, 272; ii. 245, 305
Vesci, Eustace de; *see* Eustace
Vespasiana, a so-called British province, i. 2
Vicarius, office of, i. 253, 276, 314
Vicecomes, office of, i. 186, 253, 440; ii. 128
Vicinity, the tie of, ii. 333. *See* Voisinage
Victor IV., rival of Innocent II., i. 210
"Vier Anen," the, ii. 310, 318
Vikings, Northern, origin of the name, i. 22; earliest recorded appearance of, on the Scottish coasts, 22; incursions on the British Isles in the reign of Constantine I. and II., 42, 53, 55; Scottish and Irish, 56, *seq.*; Cumberland cleared of, by Edmund, 72; Vikings of Orkney, 80, *seq.*
Villani, the, of Lincoln and York, i. 134
Villeinage, the system of, i. 104; ii. 162-166
Vinet, Alexander, ii. 66
Virgate, the (quarter-holding), i. 291; ii. 270
Visigoths, ii. 210, 211, 258; laws of, 212
Visitation; *see* Can and Cuairt
Visnet; *see* Voisinage
Vivian, Cardinal, ii. 98
Vladica, ii. 230

Vogt, i. 339. *See* Advocatus
Voisinage, system of the, i. 266-272, 275, 283, 288, 436; ii. 49, 298, 333-340

WAGER of battle, the, i. 271, 281, 437; ii. 50, 522
Walcher, bishop of Durham, ii. 442
Waldgastnung, i. 37; ii. 475
Walenses, the British race of Strath Clyde, i. 21
Wales, the "noble tribes" of, i. 8; Norse incursions on, 57, *seq.*, 161; courts of law in, 278
Walter de Ghent, i. 200
Walter de Moray, ii. 66
Walter Fitz Alan, seneschal of the realm, i. 317
Walter, prior of Kelso, i. 378
Walter the Steward, ii. 33, 56
Waltheof, Ealdorman, of Northumbria, i. 92, 134, 137
Waltheof, earl of Northumberland, i. 187, 218, 223
Wapentakes, i. 256. *See* Hundred
War, a bond of union in ancient Celtic confederacies, i. 25
Wara, to whom applied, ii. 264
Ward, the, not the Hundred, ii. 339
Wardship, among feudal casualties, ii. 129
Warenne, Earl, i. 285
Warkworth, castle of, i. 366; sack of, 367
Warranty, the law of, i. 260, 261; ii. 16; the clergy as warranters, i. 263
Watch-dog, punishment of killing a, i. 259
Waterford, i. 57
Watling Street, i. 63, 66; ii. 273, 516
Wealh-gerefa, the Anglo-Saxon, i. 313
Wealh, the Teutonic, i. 245, 296; ii. 224, 234
Wearmouth, Malcolm Ceanmore at, i. 133
Weight, measures of, ii. 341, *seq.*
Welsh Gavel, i. 243
Welsh, courts of the, i. 278; defensive alliance of the Comyns with, ii. 74
Welsh "laws of Howel Dha," i. 29, 31, 108, 312; ii. 267, 303
Wendover, referred to, i. 74, 142
Wer, the Teutonic, what, ii. 202
Wer-borh, the, i. 272; ii. 334
Wergild (compensation for homicide), i. 258, 266, 269; among the Franks, ii. 275, 290, 297; the Frisons, 276, 294; the Alamanni, 277; the Bavarians, 277; the Angles and Werns, 278; the Lombards and Saxons, 278; the Burgundians, 279; of the Anglo-Saxons, 280-282, 298; under William the Conqueror, 282; and Henry I. 282; laws as to, in Iceland, and the islands of Gothland and Guley, 283, 300, *seq.*; in Sweden and Denmark, 284; in Wales, 284, 303, *seq.*
Werk, fortress of, i. 192; sieges of, 195, 199, 210, 212, 364; town of, burnt by John, ii. 5; inquisition at, 428, 429
Werns, wergilds of, ii. 278
Wertermore, i. 62
Wessex, Saxons of, i. 64; dynasty of, 68; compurgation in, 267
Western Isles (*see also* Hebrides), i. 44, 56; attacked by Eric, 66; attempted seizure by Godfrey Crovan, 163; negotiations of Alexander II. with Norway regarding the cession of, ii. 43, 44; policy of Alexander III., 83; Haco's expedition, and its results, 84-97
Whitby, conference of, i. 9
Whithern (Candida Casa), see of Ninian, i. 18; ii. 355, 382; extinction of the line of Anglian bishops, i. 21
Wick, original application of the term, i. 294, 296
Wick, town of, i. 412
Widow, the, of Edinburgh, her curse on Alexander II., ii. 121
Wif-man, ii. 325
Wilfrid, diocese of, i. 12
William, bishop of the Orkneys, i. 404
William de Brechin, ii. 66
William de Camerhon, a regent, ii. 66
William de Dumfries, ii. 82
William d'Estoteville, i. 416
William de Fortibus, ii. 25
William de Hay, i. 415
William de Say, i. 433
William de Vallibus, i. 422
William de Vesci, i. 368
William de Vetere Ponte, i. 422
William du Pont de l'Arche, i. 192
William, dean of York, afterwards bishop of Durham, i. 217, 364
William, earl of Mar, ii. 60
William Fitz Duncan, i. 195, 196, 199, 204, 222
William, "king's chaplain," a regent, ii. 66
William of Egremont, i. 223, 356
William (Rufus) II. of England, i. 129, 141; ii. 54; unsuccessful inroad on Scotland, i. 142; Malcolm III.'s ne-

gotiations with, 143, 144; ravages of his followers, 152
William, son of Henry I., i. 189
William the Conqueror, i. 80; policy of, 129; his northern wars, 130-132; the misery resulting from them, 134; his invasion of Scotland, 136-138; his contest in Normandy against his eldest son, Robert, who, after reconciliation, was despatched with an army against Malcolm III. of Scotland, 140; his death, 140, 141; his reply to the Pope's demand for fealty, 175
William the Lion, son of Prince Henry, i. 225; his relations with Henry II., 362, 363; war with England, 364-368; capture of, 369; terms of the treaty of Falaise, 373; the treaty ratified at York, 375; disturbances in Scotland, 379; occurrences in Galloway, 380-382, 387-390; contest with the Pope, 382-384; pretensions of Mac William to the Scottish crown, 384, 385; failure of his suit with Matilda, daughter of the duchess of Saxony, 386; grant of Huntingdon renewed, 386; marriage with Ermengarde de Bellomont, 391; the revolt in Moravia, 391; death of Mac William, 393; conference with the bishop of Durham as to the treaty with Henry, 394, 395; independence of Scotland re-established, 396; cordiality of his alliance with Richard I., 397; urges unsuccessfully his claims on Northumberland, 397-399; his illness at Clackmannan, and question of the succession, 399; disturbances in the north of Scotland, 400-413; birth of a prince (Alexander), 414; interview with John of England at Lincoln, 417; the attempt of John to build a castle at Tweedmouth thwarted by William, 418, 419; threatened invasion, 420; the treaty of Northampton, 423, 442; consequent discontent in Scotland, 425-430; illness at Haddington, 431; visit to the north in connection with Earl John of Orkney, 432; last illness and death at Stirling, 433; his character, later policy, legislation, etc., 433, *seq.*; his family, 435; his illegitimate children, 433; burial at Arbroath, ii. 1
Wimund, bishop of Man, his proceedings in Scotland, i. 219-221; long confounded with Mac Heth, 221; grant to him of Furness, 221, 224, 347
Winchester, bishop of, i. 215, 351; earl of, 422; ii. 25
Windsor Castle, siege of, ii. 7
Winwed, battle of, i. 11
Wishart, John, a regent, ii. 66
Wishart, Robert, bishop of Glasgow, i. 343
Wishart, William, bishop of St. Andrews, i. 343
Wishart, William, archdeacon of St. Andrews, ii. 66
Witan, the Anglo-Saxon, i. 53, 277; ii. 335, 514
Witnesses, necessity for, in the purchase of property, i. 260, 300
Wladaca (Vladica), ii. 230
Wladig; *see* Gulad
Woden, known as "the foreign god," ii. 248
Woodstock, palace of, i. 391
Worcester, archdeaconry of, i. 217
Wynton, Andrew, prior of Lochleven, i. 87, 117, 124, 173

YEOMANRY, the English, i. 208; ii. 253
York, archbishop of, his ecclesiastical claims over Scotland, i. 178, 194, 358 (*see* Thorstein); ii. 29, 30
York, seizure of, by the Norse, i. 57; Eric's futile attempt to re-establish himself there, 72, 73; William the Conqueror's castles at, 130, 131; cathedral of, 375; see of, 12; meeting of Scottish and English courts at, ii. 10, 11; council at, for the settlement of the demands of Alexander II., 31, 32
Yorkshire, Anglo-Norman barons of, i. 190, 200, 367; their capture of William the Lion at Alnwick, 369, 370; fifteen years afterwards they escort him to Canterbury, 396; conduct of, when John invaded Scotland, ii. 5
Yorkshire Danes, earldom of, granted to Uchtred, i. 93
Yrfe, meaning of, ii. 263
Yring, a Norseman (?), i. 64

ZOZIMUS, Pope, i. 323

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157275